

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 95-10289
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

NOEL R. SCHMITZ,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Texas
(3:94-CR-00389)

December 20, 1995

Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:¹

In this direct criminal appeal defendant Schmitz argues that the district court erred in imposing a \$2,000 fine for two reasons: (1) he has no ability to pay the fine; (2) the court imposed a cost of incarceration fine without first imposing a punitive fine. United States v. Fair, 979 F.2d 1037 (5th Cir. 1992). Schmitz is young, in good health and has a high school education. For the past two years he worked as a warehouse supervisor earning \$1,800

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

per month. He, has ample future earning capacity to justify imposition of this fine. United States v. O'Banion, 943 F.2d 1422 5th Cir. 1991).

Our review of the record reveals that the defendant made no contemporaneous objection to the fine on grounds that it represents a cost of incarceration fine and no punitive fine had been imposed. This fine was fair and reasonable and does not result in manifest injustice. The district court did not commit plain error in imposing this fine. We therefore affirm the district court's sentence.

AFFIRMED.