

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10195
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH RAY RAINEY, a/k/a Kenny Reine,
a/k/a John Rainy,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:93-CR-99-A
- - - - -

October 23, 1996

Before POLITZ, Chief Judge, and JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

Kenneth Ray Rainey appeals from the imposition of a 20-month prison sentence following revocation of his two-year term of supervised release. Rainey contends that his sentence violated the Double Jeopardy Clause and the Cruel and Unusual Punishment Clause and was plainly unreasonable.

The Double Jeopardy Clause does not apply to supervised-

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

release-revocation proceedings. *United States v. Marmolejo*, 915 F.2d 981, 983 (5th Cir. 1990).

Rainey's sentence did not exceed the statutory maximum applicable to his underlying offense; nor did the sentence exceed the two-year maximum permitted by the revocation statutes. See 18 U.S.C. §§ 1343, 3581(b)(5). Rainey's punishment did not constitute cruel and unusual punishment. *United States v. Celestine*, 905 F.2d 59, 60 (5th Cir. 1990).

Rainey's sentence was not plainly unreasonable. See *United States v. Giddings*, 37 F.3d 1091, 1093 (5th Cir. 1994), cert. denied, 115 S. Ct. 1323 (1995). Rainey's unrepentant conduct merited the imposition of a stiff prison sentence.

Finally, Rainey's appeal is frivolous. Counsel has "no duty to bring frivolous appeals; the opposite is true." *United States v. Burleson*, 22 F.3d 93, 95 (5th Cir.), cert. denied, 115 S. Ct. 283 (1994).

APPEAL DISMISSED. 5TH CIR. R. 42.2.