

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-20112
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDDIE JONES, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(H-96-CR-155-1)

September 25, 1997

Before KING, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:*

Eddie Jones, Jr., appeals his sentence in a guilty-plea conviction for possession with intent to distribute in excess of 50 grams of cocaine base, in violation of 21 U.S.C. § 841(b)(1)(A). He contends that the district court erred 1) in declining to reduce Jones's offense level two to four levels under U.S.S.G. § 3B1.2 because he played a minor or minimal role

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

in the offense and 2) in refusing to depart downward because the district court misunderstood its authority.

We have reviewed the record and the briefs and conclude that no reversible error was committed. The district court did not clearly err in declining to assign a minimal or minor participant role to Jones. Moreover, the district court's refusal to depart downward was not error because the record does not demonstrate that the district court was under the mistaken assumption that it could not do so. See United States v. Burleson, 22 F.3d 93, 94-95 (5th Cir. 1994).

AFFIRMED.