

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 97-40335
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MITCHELL LYNN NEWTON,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:96-CR-51-1

November 19, 1997

Before JONES, SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Mitchell Lynn Newton appeals his sentence for possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1). Newton contends that the district court erred by enhancing his base offense level by two levels pursuant to U.S.S.G. § 3C1.2 for reckless endangerment during flight.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We have reviewed the record and the briefs of the parties and hold that the district court's application of § 3C1.2 was not clearly erroneous. Newton, while resisting arrest, "recklessly created a substantial risk of death or serious bodily injury to another person" when he accelerated his vehicle in reverse toward a police officer. See § 3C1.2.

AFFIRMED.