

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-60840
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUS ALLEN, JR., also known
as Sealed Defendant 1,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:94-CR-91-ALL-B-N

October 19, 1999

Before JONES, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

The district court permitted Gus Allen, Jr., to file this out-of-time appeal from his 1995 conviction and sentence, after a jury trial, for distribution of cocaine base (in violation of 21 U.S.C. § 841(a)(1)).

For the first time on appeal, Allen contends that the district court erred in applying the Sentencing Guidelines' enhanced penalty provisions for cocaine base because the Government allegedly failed to prove by a preponderance of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

evidence that the substance involved was "crack" cocaine. See U.S.S.G. § 2D1.1(c), note (D) (definition of "cocaine base" means "crack"). Because trial testimony by both a confidential informant and an undercover drug-enforcement agent showed that the substance involved was "crack" cocaine, the evidence was more than sufficient to warrant enhanced sentencing. See United States v. Canada, 110 F.3d 260, 262 (5th Cir. 1997) (Government must prove sentencing factors by a preponderance of the evidence). Accordingly, Allen's conviction and sentence are AFFIRMED.