

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10243
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TERRY WAYNE COOPER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(7:97-CVR-18-4)

November 10, 1998

Before JOHNSON, DUHE, and STEWART, Circuit Judges.

PER CURIAM:*

Terry Wayne Cooper appeals his sentence imposed by the district court for distribution of crack cocaine. He argues that the court improperly departed upward from the Sentencing Guidelines.

A district court may depart upward if it finds that an aggravating circumstance exists which the guidelines did not adequately take into consideration. See 18 U.S.C. § 3553(b). This Court reviews a district court's upward departure for an abuse of discretion. See United States v. Singleton, 49 F.3d 129, 132 (5th Cir. 1995). The sentence will be affirmed if (1) the district court gives acceptable reasons for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR.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

departing and (2) the departure is reasonable under the circumstances of the particular case. See id. After a thorough review of the record, we find that the district court's departure was not unreasonably excessive in light of the defendant's extensive criminal history. Because the district judge clearly stated that Mr. Cooper's criminal history was the basis for his departure, there was no abuse of discretion.

AFFIRMED.