

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-10542  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELTON RAY BARNES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:98-CR-178-1-Y  
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September 28, 2000

Before DAVIS, JONES, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Elton Ray Barnes has appealed his guilty-plea conviction and sentence for possession of methamphetamine with intent to distribute. Barnes argues that the district court plainly erred by imposing a twenty-year mandatory minimum sentence pursuant to 21 U.S.C. § 841 (b)(1)(A) because the sentence is based on a prior controlled-substance-felony conviction and a quantity of drugs not alleged in the indictment. We pretermitt consideration of these arguments in light of the Government's concessions that Barnes was subject to a ten-year mandatory minimum sentence under

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

21 U.S.C. § 841(b)(1)(B) rather than a twenty-year sentence under § 841(b)(1)(A) and that the probation officer computed Barnes' sentence based on an incorrect quantity of drugs. We VACATE Barnes' sentence and REMAND to the district court for resentencing following the preparation of a new presentence investigation report by the probation officer.

VACATED AND REMANDED.