

No. 10-6389

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
**Oct 20, 2011**  
LEONARD GREEN, Clerk

UNITED STATES OF AMERICA, )  
 )  
Plaintiff-Appellee, )  
 )  
v. )  
 )  
JIMMY D. CORNETT, )  
 )  
Defendant-Appellant. )

ORDER

Before: KETHLEDGE and WHITE, Circuit Judges; ECONOMUS, District Judge.\*

Defendant Jimmy D. Cornett was convicted by a jury of conspiracy to manufacture and produce methamphetamine. He was designated as a career offender, which resulted in a sentencing guideline range of 262 to 327 months. A 327-month sentence was imposed. Cornett filed the present appeal. He now moves to remand his case to the district court for resentencing.

In his appellate brief, Cornett challenges his conviction, but not his sentence. It has since been determined that Cornett is not, in fact, a career offender and that the applicable sentencing guideline range is 78 to 97 months. The government does not disagree, but opposes a remand because Cornett did not challenge his sentence in his brief and, therefore, the issue could be deemed waived.

We conclude that a limited remand to correct the error in sentencing is appropriate. *See* FED. R. APP. P. 12.1. We retain jurisdiction to proceed with the appeal after the district court resentsences Cornett.

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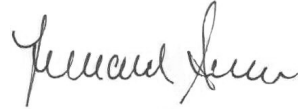
\*The Honorable Peter C. Economus, United States District Judge for the Northern District of Ohio, sitting by designation.

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The motion to remand is granted.

ENTERED BY ORDER OF THE COURT

A handwritten signature in cursive script, appearing to read "Remand Clerk", is written above a horizontal line.

Clerk