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No. 96-2561

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United States of America,

Appellee,

v.

Scipio M. Clark,

Appellant.

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\* Appeal from the United States  
\* District Court for the  
\* Eastern District of Missouri.

\* [UNPUBLISHED]  
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Submitted: October 10, 1996

Filed: October 24, 1996

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Before BEAM, HANSEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

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PER CURIAM.

Scipio Clark, an African-American, challenges the 120-month sentence imposed by the district court<sup>1</sup> after he pleaded guilty to possessing cocaine base (crack) with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B), and to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g) and 924(a)(2). We affirm.

At issue is Clark's offense-level calculation, which was derived from the penalty scheme set forth in section 841(b)(1), providing the same penalties for given amounts of crack and 100 times greater amounts of powder cocaine. Clark argues that the 100-to-1 ratio has a disproportionate adverse effect on African-Americans; Congress's rejection of the Sentencing Commission's

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<sup>1</sup>The Honorable George F. Gunn, Jr., United States District Judge for the Eastern District of Missouri.

proposed amendment to the Sentencing Guidelines--which would have eliminated the 100-to-1 ratio and equalized the penalties for crack and powder cocaine--evidences a discriminatory purpose on Congress's part in maintaining the penalty scheme; and, thus, continued application of the scheme violates his Fifth Amendment equal protection and due process rights.

We recently rejected similar arguments in United States v. Carter, 91 F.3d 1196, 1198-99 (8th Cir. 1996) (per curiam). We deny the motions Clark filed pro se on appeal.

Accordingly, the judgment of the district court is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.