

March 22, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-30841
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL H. WARREN,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 02-CR-30029-01

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Michael H. Warren pleaded guilty to bank fraud. By fraudulently keeping for his own enrichment the proceeds of used car sales, Warren failed to repay money loaned under a financing arrangement between the bank and Warren's used car dealership. Warren also failed to pay state sales taxes he collected as part of the same sale proceeds.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Warren appeals the district court's determination of relevant conduct that increased his sentence by including the unpaid sales taxes in the amount of loss attributed to the crime. Warren fails to show that the unpaid taxes were not part of the same course of conduct that included defrauding the bank. See U.S.S.G. § 1B1.3(a) & comment. (n.9). Warren also fails to establish that his failure to pay the sales tax was not "criminal conduct" as is required to constitute relevant conduct for sentencing purposes. See United States v. Powell, 124 F.3d 655, 665 n.10 (5th Cir. 1997).

The judgment of the district court is AFFIRMED.