

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 25, 2010

Lyle W. Cayce
Clerk

No. 09-10966
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSEPH DESHUN JOHNSON, also known as Deshun Joseph Johnson, also known as Buck,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:08-CR-98-33

Before WIENER, PRADO and OWEN, Circuit Judges.

PER CURIAM:*

Joseph Deshun Johnson pleaded guilty to conspiracy to possess with the intent to distribute more than five kilograms of cocaine. The district court sentenced Johnson to a below-guidelines sentence of 324 months of imprisonment. Johnson appeals his sentence, arguing that the district court clearly erred in adopting the presentence report's (PSR's) finding that he converted a majority of his powder cocaine into crack cocaine.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 09-10966

The Government argues that Johnson's argument is not reviewable on appeal because he withdrew his objection to the determination at the sentencing hearing. Perceiving no intentional withdrawal of Johnson's objection to the PSR, we reject the Government's assertion of a waiver. *See United States v. Arviso-Mata*, 442 F.3d 382, 384 (5th Cir. 2006).

Turning to the merits of the appeal, we review the district court's factual finding for clear error. *United States v. Villanueva*, 408 F.3d 193, 203 & n.9 (5th Cir. 2005). "In making its factual findings for sentencing, a district court may adopt the findings of the PSR without additional inquiry if those facts have an evidentiary basis with sufficient indicia of reliability and the defendant does not present rebuttal evidence or otherwise demonstrate that the information is materially unreliable." *United States v. Ford*, 558 F.3d 371, 377 (5th Cir. 2009) (internal quotation marks and citation omitted). The information contained in the offense conduct portion of Johnson's PSR was gleaned from, inter alia, "investigative material prepared and compiled by FBI and ATF agents/TFOs [task force officers], DPS deputies, and Arlington and Fort Worth Police Department officers." The PSR stated that the probation officer had personally conducted interviews with two FBI Special Agents and an ATF Special Agent, all of whom were identified by name. Further, in response to Johnson's objection, the probation officer stated that her information was derived from "the investigative materials and the reports of several reliable codefendants."

The PSR was supported by an adequate evidentiary basis with sufficient indicia of reliability. Johnson did not present any rebuttal evidence; nor did he demonstrate that the information was materially unreliable. The district court thus did not clearly err in adopting the finding made in the PSR. *See Ford*, 558 F.3d at 377.

AFFIRMED.