

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

United States Court of Appeals
Fifth Circuit

FILED

December 19, 2013

Lyle W. Cayce
Clerk

No. 12-41374
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LEONARD ROSS DURFEY, II,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:11-CR-870-1

Before WIENER, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Leonard Ross Durfey, II, appeals his sentence following a jury trial conviction for possession with intent to distribute more than 1,000 kilograms of marijuana. Durfey challenges the district court's finding that he was not entitled to a sentence reduction pursuant to U.S.S.G. § 5C1.2 because he did not truthfully provide the government with all relevant information concerning his offense. We review the district court's factual

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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findings concerning a defendant's eligibility for a reduction under the § 5C1.2 safety valve for clear error. *See United States v. McCrimmon*, 443 F.3d 454, 457-58 (5th Cir. 2006).

A defendant is eligible for a two-level reduction in the offense level if he meets the five criteria listed in the § 5C1.2 safety valve provision. U.S.S.G. § 2D1.1(b)(16). The fifth criterion, the only one at issue here, requires that "the defendant has truthfully provided to the government all information and evidence the defendant has concerning the offense." § 5C1.2(a)(5); *see also* 18 U.S.C. § 3553(f)(5). The defendant has the burden of showing that he truthfully provided the government with all relevant information. *United States v. Flanagan*, 80 F.3d 143, 146-47 (5th Cir. 1996).

In this case, the district court made an "independent determination" that Durfey had not provided all relevant truthful information that qualified him for a sentence reduction under § 5C1.2. *See McCrimmon*, 443 F.3d at 457-58. That determination is not clearly erroneous in light of the fact that Durfey failed to provide information regarding the supplier of the marijuana he was transporting. *See id.*

AFFIRMED.