

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

No. 19-51011
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 15, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

NORMAN DEAN MCWHORTER,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:18-CR-260-2

Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Norman Dean McWhorter pleaded guilty to conspiracy to distribute and possess with the intent to distribute 50 grams or more of methamphetamine. He now appeals his 300-month within-guidelines sentence on grounds that the district court clearly erred in basing his guidelines range on the presentence report's (PSR) drug-quantity calculation, which he contends lacked an adequate evidentiary basis.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 19-51011

The district court's determination of the amount of drugs attributable to a defendant is a factual finding, which this court reviews for clear error. *See United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005). A district court may adopt the facts in the PSR without further inquiry if it has "an adequate evidentiary basis with sufficient indicia of reliability and the defendant does not present rebuttal evidence or otherwise demonstrate that the information in the PSR is unreliable." *United States v. Rose*, 449 F.3d 627, 633 (5th Cir. 2006). The defendant has the burden of showing the information in the PSR is materially untrue. *See United States v. Davis*, 76 F.3d 82, 84 (5th Cir. 1996). McWhorter has not met his burden in this case.

The PSR's drug-quantity calculation had an adequate evidentiary basis with sufficient indicia of reliability, as it was based on trial testimony the district court found to be credible. *See id.* Because McWhorter's rebuttal evidence does not contradict the testimony or show the facts relied on in the PSR are unreliable, the district court did not clearly err in adopting the PSR's drug-quantity calculation.

The judgment of the district court is **AFFIRMED**.