UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-1547
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

IVA GAY REYNOLDS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(CR3 91 355 G)

March 26, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[1]

Iva Gay Reynolds appeals her sentence following her plea of guilty to a single drug trafficking count. We find no error and affirm.

I.

Ivy Gay Reynolds pleaded guilty to a superseding information charging her with a single count of possession of marijuana with

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[1]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

intent to distribute in violation of 841 U.S.C. §§ 841(a)(1) and (b)(1)(B). The probation officer determined that Reynolds's base offense level was 34 with a criminal history category of I. The probation officer recommended, and the judge accepted, a three-level enhancement for Reynolds's role as manager/supervisor in the offense and a two-level reduction for acceptance of responsibility. These adjustments brought Reynolds's total offense level to 35, resulting in a guideline range of 168-210 months. The district court departed downward and sentenced Reynolds to 144 months of imprisonment followed by a term of supervised release for five years. Reynolds raises a number of objections which we consider below.

II.

A.

Reynolds argues first that she was never provided with the addendum to the PSR. Therefore, she was unable to be heard on her objections to the presentence report (PSR) as provided by Fed. R. Crim. P. 32.

The addendum to the PSR raised no new issues. The probation officer in the addendum accepted Reynolds's explanation as to one objection and rejected her objection to the upward adjustment for her role as manager or supervisor essentially based on evidence already in the PSR. Yet, Reynolds never brought the failure to provide her with the addendum to the court's attention, nor did she object to the district court's use of the addendum to resolve her objections to the PSR.

Reynolds still could have made any arguments in opposition to the PSR's proposed solution to her objections because she had made those objections and knew the court would ultimately rule on them. However, she did not do so. Therefore, Reynolds was not prejudiced by not seeing the addendum before the sentencing hearing. Because Reynolds has not shown an obvious error or mistake, this argument is without merit.

B.

Reynolds argues next that the district court erroneously classified her as a manager or supervisor, which resulted in a three-level increase in her base offense level.

The district court's sentence must be upheld so long as it results from a correct application of the guidelines to factual findings which are not clearly erroneous. **United States v. Alfaro**, 919 F.2d 962, 964 (5th Cir. 1990), **cert. denied**, 112 S.Ct. 943 (1992). If the district court's findings of fact are plausible, based on a review of the entire record, they may not be reversed. **Id**. at 966. The district court may properly consider any relevant evidence so long as it carries with it sufficient indicia of reliability to support its probable accuracy. **Id**. at 964. "[A] presentence report generally bears sufficient indicia of reliability to be considered as evidence by the trial judge in making the factual determinations required by the sentencing guidelines." **Id**. at 966.

Guideline section 3B1.1(b) requires a three-level increase in the offense level "[i]f the defendant was a manager or

supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(b). A finding that a defendant is a manager or supervisor under § 3B1.1(b) is reviewed under the "clearly erroneous" standard. **United States v. Liu**, 960 F.2d. 449, 456 (5th Cir.), **cert. denied**, 113 S.Ct. 418 (1992).[2]

Reynolds argues that the nature of her participation in the organization did not rise to the level of manager or supervisor. She admits that she functioned as a driver and passenger during the transport of drug shipments. However, she disagrees that she was a principal driver or that her activities made her a manager or supervisor. Additionally, she argues, without citing authority, that if she did oversee the organization's finances, such activity is not a supervisory role. Finally she contends that she was erroneously classified as a manager or supervisor because she was the wife of the leader, and such fact does not automatically make her a manager or supervisor.

The conspirators of this organization made at least 42 trips to deliver marijuana from Texas to Ohio. On at least 11 occasions, Reynolds either drove or accompanied members on trips to deliver marijuana to customers. Although Reynolds's husband was the leader of the organization, during his absence she exercised control and authority over the other participants by supervising them.

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[2] **See United States v. Rodriguez**, 897 F.2d 1324, 1325-26 (5th Cir.), **cert. denied**, 111 S.Ct. 158 (1990) for a discussion of the factors to be considered in deciding whether a defendant was a manager or organizer. **See also** § 3B1.1, **comment**. (n.3).

Reynolds also kept track of the finances for the purchase and sale of the marijuana and helped exchange the drug profits for gold coins to keep the money from being traced. Additionally, Reynolds signed a factual resume admitting that she participated as a principal driver.

Considering the above evidence, the district court did not clearly err in adjusting Reynolds's sentence upward three levels for her participation in a managerial or supervisory role.

C.

Reynolds argues next that the district court disparately sentenced her as compared to the sentences received by her co-defendants. She contends that several of her codefendants pleaded to the same charge and had similar criminal histories, yet received substantially lighter sentences. Reynolds offers unsupported allegations that the sentence disparity resulted from the Government's desire for revenge after Reynolds's husband would not cooperate with authorities. She also contends that the complicated nature of the Sentencing Guidelines allows the Probation Department and the U.S. Attorney to manipulate the system to achieve the sentences they desire the individual defendants to have.

However, Reynolds did not raise this issue in the district court. Sentences attacked on grounds raised for the first time on appeal are not allowed in any but the most exceptional cases. **United States v. Garcia-Pillado**, 898 F.2d 36, 39 (5th Cir. 1990). This is not such a case. In any event the argument is meritless.

A defendant cannot rely upon her codefendants' sentences as a yard-stick for her own. **United States v. Boyd**, 885 F.2d 246, 249 (5th Cir. 1989). Therefore, Reynolds's disparate sentence argument fails.

D.

Reynolds argues finally that the district court erred in denying her motion to supplement the record on appeal. She contends that to prove that her sentence was arbitrarily set, she should have been allowed to supplement the record on appeal with conviction and sentencing information of her codefendants. Because Reynolds's "disparate" treatment issue was not properly preserved in the district court, such information cannot change the result of her appeal. Therefore, this argument is also without merit.

AFFIRMED.