

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1676  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONDAL MCNEIL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. CR4-92-014-A

- - - - -  
August 11, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

McNeil mistakenly asserts that the district court increased his offense level by two points under U.S.S.G § 2D1.1(b)(1) for possession of a dangerous weapon. In fact, the record reflects that the district court determined that such an enhancement was not appropriate in this case. Thus, the only remaining issue is whether the district court erred in failing to reduce McNeil's offense level under § 3E1.1 for acceptance of responsibility.

The Sentencing Guidelines provide for a two-point reduction

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in the offense level "[i]f the defendant clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct . . . ." § 3E1.1(a). The court may properly rely on information contained in the presentence report (PSR) when making factual sentencing determinations, provided that the information has "some minimum indicium of reliability." United States v. Shipley, 963 F.2d 56, 59 (5th Cir.), cert. denied, 113 S.Ct. 348 (1992) (internal quotation and citations omitted). The court is not required to make any findings of fact in support of its decision not to grant an adjustment for acceptance of responsibility. United States v. Allison, 953 F.2d 870, 875 (5th Cir.), cert. denied, 112 S.Ct. 2319 (1992).

In United States v. Mourning, 914 F.2d 699, 705 (5th Cir. 1990) (statutorily overruled in part on another issue), this Court held that a defendant "must first accept responsibility for all of his relevant criminal conduct" before he is entitled to a reduction for acceptance of responsibility. At the time of McNeil's sentencing in July 1992, "relevant conduct" included:

all acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense, or that otherwise were in furtherance of that offense.

§ 1B1.3(a)(1).

McNeil clearly admitted and accepted full responsibility for the crime of conviction -- the distribution of cocaine base on October 12, 1990. However, in his objections to the PSR and at

the sentencing hearing, McNeil denied that he had a leadership role in this offense. The PSR indicated that McNeil directed the activities of two other individuals involved in the October 12, 1990, offense. Because McNeil failed to meet his responsibility for demonstrating that this information was materially untrue, the district court could properly have relied on it to conclude that McNeil was the leader of the crime of conviction. See Shipley, 963 F.2d at 59. Accordingly, once McNeil refused to acknowledge responsibility for all of his relevant conduct, including his leadership role in the drug distribution offense, the district court properly declined to award an adjustment for acceptance of responsibility. See id.

AFFIRMED