IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1731
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THERMON L. MORGAN,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-193-G

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June 24, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Thermon L. Morgan argues that the district court failed to comply with Rule 32(c)(3)(D) of the Federal Rules of Criminal Procedure. Pursuant to that rule, if a defendant objects to certain matters in a presentence report (PSR), the district court is required, as to each controverted matter, to make a finding as to the allegation or a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. FED. R. CRIM. P. 32(c)(3)(D). That rule, however, does not require a catechismic regurgitation of each

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

fact determined and each fact rejected if they are determinable from a PSR that the court has adopted by reference. United States v. Sherbak, 950 F.2d 1095, 1099 (5th Cir. 1992).

At sentencing, the court adopted the PSR "except where [it had] sustained any objections." The court, however, did not sustain Morgan's objection regarding the four-level increase. The written judgment, moreover, provides that the district court adopted all the findings in the PSR. In addition, the district court specifically found that Morgan had a "prominent role in this offense which makes it proper to assess this four-level enhancement." Taken as a whole, the court's pronouncements satisfy the requirement of Rule 32(c)(3)(D). See Sherbak, 950 F.2d at 1099.

Morgan also argues that the district court erred in finding that he was a leader or organizer of the criminal activity. U.S.S.G. § 3B1.1(a) provides for a four-level increase to the offense level if the defendant "was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." In determining whether a defendant has played a leadership role in criminal activity, the court should consider whether the defendant exercised decision-making authority, the nature of the participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning the illegal activity, and the degree of control and authority exercised over others. § 3B1.1, comment. (n.3). In addition, more than one person may qualify as a leader

or organizer of a criminal association or conspiracy. Id. Furthermore, the defendant's role as an organizer or leader in a criminal activity for the purposes of section 3B1.1 may be deduced inferentially from available facts. United States v. Manthei, 913 F.2d 1130, 1135 (5th Cir. 1990).

A reviewing court will disturb a district court's factual findings regarding sentencing factors only if those findings are clearly erroneous. United States v. Whitlow, 979 F.2d 1008, 1011 (5th Cir. 1992). A factual finding is not clearly erroneous if it is plausible in light of the record read as a whole. Id.

In resolving disputed factual matters at sentencing, the district court may consider any relevant evidence, without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy. Manthei, 913 F.2d at 1138. A PSR generally has that type of reliability. United States v. Alfaro, 919 F.2d 962, 966 (5th Cir. 1990).

The PSR reflects that Morgan recruited teenagers and other individuals who were unemployed during tax year 1991 and prepared false W-2 forms showing that they had earned wages and had had federal tax withheld. Morgan then prepared or instructed other people how to prepare false tax returns for these individuals. Morgan directed the individuals to file the returns at "K Mack and Associates." Morgan told some of the individuals involved in the scheme that if they did not give him the money from the false claims, he would put a "block" on their social security number.

The record includes summaries of interviews conducted by IRS

agents with several codefendants. According to the summary of Billy Lyons's interview, Billy Lyons admitted that he had referred several people to Morgan for tax-return preparation. Lyons also admitted that Morgan would tell these individuals that he could help them get some money and that they would not get in trouble. In addition, Morgan would prepare the W-2 forms and the 1040 forms.

Lyons's statements were corroborated by two other participants in the scheme. David Albert provided in his interview that Morgan had asked him if he wanted to make a "quick $300." Morgan gave him a W-2 form that contained Albert's name and current address and told Albert that he worked at "Ray's Retail and Detail." Albert, however, had never worked at that establishment. Morgan also gave Albert a completed tax return. Albert then took the completed forms to "KMACK." A few days later, Albert picked up a tax-refund check for approximately $3400. Albert gave the check to Morgan. After the check was cashed, Albert kept $300, and Morgan put the rest of the money in his pocket. Similarly, the memorandum of the interview with Clifton Barnett provides that Morgan recruited Barnett into the scheme; that Morgan explained the scheme to Barnett; that Morgan gave Barnett completed tax-return forms reflecting false information; that Barnett went to a tax-refund service and received a tax-refund check for approximately $3000; that Barnett kept $300; and that Morgan kept the rest of the money.

Based on the record in this case, the district court's finding is not clearly erroneous.

AFFIRMED.