

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1811
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GODWIN EDEWOR OMOGAGA, a/k/a
Anthony Edwayne Scott,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
CR4 90 077 K

July 28, 1993

Before GARWOOD, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Appellant Omogaga was sentenced to 24 months imprisonment for falsely representing himself as a United States citizen. This sentence represented an upward departure from the 6-8 month range used as his guidelines offense level.¹ He has appealed the upward

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ In his brief, Omogaga asserts that the correct guidelines range yielded a sentence of 0-6 months. He does not raise this issue as a point of appeal, however, and we do not consider it.

departure, contending that it is unauthorized by the Guidelines and unreasonably high, and he requested expedited treatment of his appeal so that his term will not have been completely served before we review the case. The court has done its best to grant an expedited review, but having done so, we affirm the sentence.

An upward departure from the guidelines may be reversed only if it constituted an abuse of discretion. United States v. Wylie, 919 F.2d 969, 980 (5th Cir. 1990). To establish an abuse of discretion, a defendant must show that the court's reasons for or amount of the departure were unreasonable, id. at 980, or that the court misapplied the law.

Omogaga principally contends that the district court should not have granted an upward departure for conduct that it also determined warranted a two-level increase for obstruction of justice. U.S.S.G. § 3C1.1. What Omogaga ignores is the well-settled principle that a sentencing court may depart upward from the Guidelines if the court finds that an aggravating circumstance exists "of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines . . ." 18 U.S.C. § 3553(b); U.S.S.G. § 5K2.0 (policy statement). In announcing his departure at the sentencing hearing, the district court relied precisely on this language and recited Omogaga's significant efforts to obstruct the administration of justice. The court relied upon a number of facts: (1) Omogaga made a false statement in a letter addressed to Honorable John McBryde [compare U.S.S.G. § 3C1.1, Application Note 3(g)]; (2) Omogaga

failed to appear for his jury trial [Application note 3(e) to § 3C1.1]²; (3) Omogaga told a pretrial services officer that his true name was Anthony Edwayne Scott; (4) at the time of his arrest Omogaga possessed a passport in yet another false name; (5) Omogaga refused to tell the probation officer the location of the passport that he had in the name of William Jordan, Jr.; (6) Omogaga refused to answer this last question when it was posed by the district court.

Given these concerted actions to foil law enforcement efforts, all of which involve facts material to the criminal investigation, the district court did not clearly err in finding aggravating circumstances of a kind or to a degree not contemplated by the two-level upward adjustment contained in § 3C1.1. We disagree with appellant's contention that United States v. George, 911 F.2d 1028 (5th Cir. 1990) has been fully superannuated by the amendment to Application Note 3(e) to § 3C1.1. George still stands for the proposition that extraordinary acts of obstruction can warrant a sentencing departure.

As for the extent of the departure, there is hardly an abuse of discretion; the amount of the departure was not unreasonable in light of all the circumstances. United States v. Wylie, 919 F.2d 969, 980 (5th Cir. 1990).

For these reasons, the district court's sentence is AFFIRMED.

² He pled guilty later.