

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2454

Summary Calendar

United States of America,

Plaintiff-Appellee,

versus

Reynaldo Jose Rodriguez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
CR H 91 0126 04

(April 7, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Reynaldo Jose Rodriguez pleaded guilty to money laundering and conspiring to possess cocaine with intent to distribute in violation of 18 U.S.C. §§ 2, 1956(a)(1)(A) and 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. Rodriguez was sentenced to concurrent sentences resulting in 292 months of confinement

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

followed by five years of supervised release. On appeal, Rodriguez challenges the findings as to his role in the crimes. We affirm.

The district court adopted the findings of the probation officer's presentence investigation report. The PSR establishes the following facts.

Rodriguez was involved in a cocaine distribution and money laundering cartel headed in Cali, Colombia, by Jairo Ivan Urdinola-Grajales. The cartel operated franchise-like cells in Miami, New York, Houston, and other American cities. Cocaine was transported from Colombia to the cartel's cells, which distributed the narcotics and forwarded proceeds to Miami for laundering. Rodriguez was involved with laundering and distribution in Houston under the umbrella of Frederico Caro-Vasquez's network.

Victor Rayo sought to transport cocaine from Houston to New York in 1989. Diego Echeverri introduced Rayo to Vasquez, who referred Rayo to Rodriguez. Rayo met with Rodriguez and his assistant, Alejandro Veita. When cocaine was delivered to Houston from Guatemala in July 1989, Rodriguez received the narcotics. The cocaine was stored at Rodriguez's tire shop. In April 1990 Rodriguez oversaw the unloading of another shipment of cocaine from Guatemala. Rodriguez sold a portion of this shipment and paid the Guatemalan drivers with the proceeds.

In February 1990, the cartel sent a courier, Francisco, from Miami to pick up money from Rodriguez. While Rodriguez lunched with Francisco, he had Gilberto Jimenez-Jimenez take Francisco's

car and place the money in it. A week later Francisco returned to Houston and contacted Rodriguez again. Rodriguez directed him to call Jimenez. After Francisco arranged a meeting with Jimenez, Jimenez was seen meeting with Rodriguez. Jimenez met Francisco and delivered the money. Afterward, Francisco discovered a \$31,000 shortfall. Francisco called Echeverri, who said he would advise Rodriguez of the problem. Jimenez then called Francisco and said that Rodriguez had instructed Jimenez to verify the shortfall. Having done so, Jimenez called Rodriguez who directed him to give Francisco another \$31,000.

The PSR recommended an increase in the base offense level for both offenses based on Rodriguez's role as a mid-level manager in the cartel. Rodriguez objected to these recommendations. Adopting the PSR in this regard, the district court found that Rodriguez was a leader/organizer in the money laundering operation and a manager/supervisor in the cocaine distribution scheme. These findings increased the offense levels for those counts by four and three points, respectively. See U.S.S.G. §§ 3B1.1(a), (b).

The district court's findings that Rodriguez played an aggravating role in the offenses are factual findings reviewed for clear error. United States v. Mueller, 902 F.2d 336, 345 (5th Cir. 1990). Under this standard, we may not reverse a finding that is plausible in light of the record viewed in its entirety, even though we might reach a different conclusion if trying the facts. Anderson v. City of Bessemer City, 470 U.S. 564, 573-74, 105 S. Ct. 1504, 1511 (1985). We note that Rodriguez objected to the district

court's § 3B1.1 findings, but not to the PSR's version of the underlying facts.

Rodriguez contends that he could not be a leader or manager because evidence showed that he received instructions from others, such as Echeverri, in the cartel. He maintains that the definitions of leader and manager require "that the individual has the independence to act without the prior approval of anyone else." We disagree. A supervisor may have little independent authority. Moreover, receiving orders as to some matters does not preclude independent action as to others. "That there were bigger fish in the larger scheme does not . . . absolve [Rodriguez] of the supervisory role he played." United States v. Carrillo, 888 F.2d 117, 118 (11th Cir. 1989).

The defendant's decision making authority is but one factor to be considered in evaluating his role in the offense. Other relevant factors include the recruitment of accomplices, the degree of participation in organizing and planning, and the scope of the criminal activity. See U.S.S.G. § 3B1.1, comment. (n.3). Reliable evidence in the record discloses that Rodriguez arranged the locations of meetings and directed how money would be delivered. He was responsible for paying Guatemalan smugglers. Rodriguez was also responsible for the storage of narcotics, which he had taken to his shop. When Francisco discovered a payment shortfall, Rodriguez instructed Jimenez to pay the difference. Although the cartel was a large organization that included persons more culpable

that Rodriguez, the district court's findings that Rodriguez played an organizing and supervisory role are not clearly erroneous.

Vasquez, whom Rodriguez describes as his boss in these activities, was convicted and sentenced in federal court in the District of New Jersey. Rodriguez informed the district court that Vasquez was not sentenced as a leader or manager. Rodriguez contends that because these aggravating findings were not applied to Vasquez, they should not be applied to him. A defendant cannot attack his sentence within the guidelines based upon the sentences of his coconspirators. United States v. Arlen, 947 F.2d 139, 147 (5th Cir. 1991), cert. denied, 112 S. Ct. 1480 (1992); see also United States v. Pierce, 893 F.2d 669, 678 (5th Cir. 1990), cert. denied, 113 S. Ct. 621 (1992). We are especially reluctant to find fault where the coconspirator was sentenced by a different court. Cf. United States v. Richardson, 901 F.2d 867, 869 (10th Cir. 1990) (holding sentence legal despite lighter sentence given coconspirator in different district court). Here, District Judge Harmon stated that had she sentenced Vasquez, she would have found him to be a leader as well. The findings of a different judge regarding a different defendant, even if based on similar information, do not establish that Judge Harmon's findings were clearly erroneous.

Rodriguez also attempts to adopt by reference arguments raised by his "co-defendants." He does not identify who they are nor whether they have filed appeals in this court. Neither does Rodriguez identify the subject matter of the arguments he adopts,

relying instead upon a blanket adoption of "any and all." This attempted adoption is not authorized by Fed. R. App. P. 28(i), which states:

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

Rule 28(i)'s reference to "cases" denotes proceedings on appeal, and not related proceedings in the district courts. Thus, although Rodriguez was indicted along with ten other persons, he is the only appellant in this case. Rule 28(i) does not permit Rodriguez to adopt briefs filed in the appeals of other persons, whether named in the same indictment as Rodriguez or charged in other indictments or district courts for related offenses. Rodriguez has waived any contentions he has failed to raise before this court.¹

AFFIRMED.

¹Without indicating what other claims Rodriguez might bring, the government correctly notes that Rodriguez waived all non-jurisdictional defects relating to his conviction by pleading guilty. See United States v. Smallwood, 920 F.2d 1231, 1240 (5th Cir.), cert. denied, 111 S. Ct. 2870 (1991).