UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-2601
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JORGE AGUSTO OCAMPO,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
CR H 90 428 9

March 17, 1993
Before KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:[1]

Jorge Agusto Ocampo appeals his sentence. Because we find no error, we affirm.

I.

Jorge Agusto Ocampo (appellant) pled guilty to money laundering, and aiding and abetting the same offense in violation of 18 U.S.C. § 1956(a)(1)(A)(i) and § 2; and possession with intent to distribute more than five kilograms of cocaine within 1000 feet

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of a school, and aiding and abetting the same offense in violation of 21 U.S.C. § 841(a)(1), § 841(b)(1)(A), and § 845 and 18 U.S.C. § 2. Appellant was originally charged in a sixteen-count indictment but entered a plea agreement in which he pled guilty to two counts and the government agreed to dismiss a conspiracy count and recommend a 20-year sentence.

The PSR detailed a major cocaine trafficking and money laundering conspiracy involving thirteen codefendants including the appellant. An investigation led to the seizure of over 9,700 kilograms of cocaine and 30 million dollars. Those quantities were characterized as only a small portion of the total volume handled by the huge smuggling and money laundering organization centered in Mexico.

After receiving information that a large delivery of cocaine was imminent, authorities surveilled "Bonnie's Nursery" and observed a refrigerated truck being unloaded at the nursery. Agents then observed Jeffrey Lee Landon leave the nursery in a white van and back into the garage of appellant's home. Landon unloaded the contents of the van into the garage with assistance from someone inside the garage.

Landon returned to Bonnie's Nursery. Agents searched appellant's garage and found twenty-four duffle bags containing 645 kilograms of cocaine. Agents then arrested appellant, the sole occupant and lessee of the residence over the previous ten months. Appellant admitted at that time that he knew the duffle bags contained drugs.

"Bonnie's Nursery," also Landon's residence, was located within 1000 feet of a private elementary school. Agents searched and found a stockpile of firearms, forty-eight rounds of ammunition, and empty duffle bags. Landon admitted transporting or storing fifteen loads of cocaine, the largest weighing 3000 kilos.

The PSR calculated a base offense level of 36 under the 1988 version of the Sentencing Guidelines, which was reduced to a total offense level of 34 by a two-point reduction for acceptance of responsibility. With a total offense level of 34 and criminal history category of I, the PSR reported a guideline imprisonment range of 151 to 188 months.

Appellant did not object to the facts or the application of the guidelines set forth in the PSR.

The district court overruled the government's request for an upward departure, adopted the PSR, and imposed concurrent terms of 188 months on each of the two counts. Appellant did not file a timely appeal, but moved for an out-of-time appeal in a 28 U.S.C. § 2255 motion. Over the government's objection, the district court granted appellant's motion, and appellant filed a notice of appeal.

II.

The appellant argues for the first time on appeal that the district court erred in basing his sentence on a doubled drug quantity because of the proximity of the drugs to a school. Relatedly, he argues that the evidence is insufficient to show that he knew or could have known that he possessed or distributed cocaine within 1000 feet of a school.

Because appellant failed to object to the district court's application of the guidelines or the presentence report, we review for plain error. **United States v. Goldfaden**, 959 F.2d 1324, 1327 (5th Cir. 1992). Plain error is so obvious and substantial that failure to consider the issue results in "manifest injustice." **Id.** (citations omitted).

First, the district court correctly calculated the guideline range. Section 2D1.3(a)(2)(B) of the applicable 1988 sentencing guidelines provides that the base offense level is to be calculated by doubling the drug amount possessed within 1000 feet of a school. U.S.S.G. § 2D1.1 provides that a base offense level of 36 is to be used for any offense committed with more than 50 kilograms of cocaine. The same base offense level applies, therefore, regardless of whether the district court used 645 kilograms or the doubled amount of 1290 kilograms. After the two-level reduction for acceptance of responsibility, the court correctly calculated the sentencing range to be 151-188 months.

The district court articulated the basis for its sentencing determination as follows:

> THE COURT: Mr. Ocampo, you were involved in the delivery of 645 kilograms of cocaine. That is only about a fraction of the 9,664 kilograms in this case. Your lawyer was able to work out a plea that kept you from being charged with all of the cocaine.
>
> If you had pleaded to the other, you would have been facing life imprisonment in this case. So where we find ourselves is in the guideline range of 151 to 188 months, with the Government asking that I go above the 188 months.
>
> It's very unfortunate that you find yourself in this position, but I believe that I must sentence you to 188 months . . ..

The district court may have used only the 645 kilograms in determining appellant's sentence. But even if the court relied on the doubled drug quantity, we find no error. The court in its discretion refused to depart upward and sentenced appellant at the upper end of the guideline range--188 months. Also, the ten-year term of supervised release, to which appellant does not object, is the minimum imposed by statute under § 845(a) (possession within 1000 feet of a school).

Second, appellant may not now challenge his sentence on the ground that the evidence is insufficient to establish an element of the offense to which he pled guilty. Appellant pled guilty to an offense that triggered the guideline provisions allowing the district court to use a doubled drug quantity in determining the sentence. Appellant does not now challenge the validity of his guilty plea.[2] His plea, therefore, constitutes an admission that he committed the crime charged. **United States v. Broce**, 488 U.S. 563, 570 (1989). The district court may properly rely on the defendant's own admission of criminal activity in assessing punishment. **See United States v. Dickson**, 712 F.2d 952, 955 (5th Cir. 1983).

Because the district court properly applied the sentencing guidelines, we conclude that the court did not commit error in

[2] Appellant challenges the court's reliance on "erroneous information" in imposing his sentence. The erroneous information used by the court, however, consisted of the facts surrounding appellant's guilty plea. Because appellant does not challenge the factual basis for his guilty plea to the possession of cocaine within 1000 feet of a school, the court did not commit plain error or violate due process in relying on this guilty plea.

sentencing the appellant at the upper end of the guideline range.

AFFIRMED.