

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2826
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STEPHEN ANENE EZEOKÉ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-92-0104)

(November 19, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

PER CURIAM:

Steven Anene Ezeoke, a Nigerian national living in the United States, was sentenced to 105 months in prison and three years supervised release after he pled guilty to one count of paying a United States Postal Service official to steal credit cards. Ezeoke challenges the sentence imposed by the district court because of that offense, which involved the potential theft of 325 credit cards. The government contends that Ezeoke waived

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

his appeal rights in the guilty plea, but we pretermitted that issue and affirm on the merits.

Ezeoke makes two challenges to his sentence. First he argues that the potential loss regarding the credit cards and the actual loss regarding \$40,000 in bank accounts he fraudulently set up should not have been considered in sentencing. Next, he argues that evidence of the amount of the potential loss was insufficient, and the district court's findings were inadequate. We disagree with both these contentions.

The district court adopted the factual findings and the application of the guidelines to the offense conduct as recommended in the PSR. In the PSR, the probation department calculated Ezeoke's base offense level according to USSG § 2C1.1, as he pled guilty to violating 18 U.S.C. § 201(b)(1)(C). Relevant to this appeal, the probation department increased his base offense level by 13 levels, because USSG § 2C1.1(b)(2)(A), cross references USSG § 2F1.1, because the total potential/actual loss was over \$3,000,000. The PSR arrived at its total sum by including both the available line of credit on the 325 credit cards plus the actual loss to financial institutions, Ezeoke had separately defrauded by setting up false bank accounts. This court has expressly approved the use of combined credit card limits on stolen credit cards as the loss for sentencing purposes in a theft case. U.S. v. Sowels, 998 F.2d 249, 250-51 (5th Cir. 1993). Sowels applies the loss concept of § 2B1.1. Further, it was proper to include the total potential/actual loss as constituting relevant conduct under USSG

§ 1B1.3. Ezeoke's use of false identification to facilitate obtaining cash and merchandise by means of stolen checks and credit cards could easily be viewed as a common scheme. Thus, the application of the guidelines was legally correct.

Ezeoke also challenges the \$3,056,694.60-- amount of the actual/potential loss calculated in the PSR and adopted by the trial court. Contrary to his assertions, the district court followed the appropriate methodology and specifically adopted the statements in the PSR. Ezeoke hotly contested the amount as being based on speculation, but he offered absolutely no evidence to prove his point. The district court could properly prefer to believe the statement in the PSR, which she found was based on interviews with the government agents who ensnared Ezeoke. In short, the district court gave Ezeoke an opportunity to disprove the statements in the PSR, as required by § 6A1.3 of the Guidelines. He was not able to do so.

The sentence imposed by the district court is **AFFIRMED**.