

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-2865
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

WILLIAM CHESTER CARR,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas

(September 21, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Appellant, William Chester Carr, pled guilty to a single count of wire fraud. The presentencing report (PSR) calculated a total offense level of 19 and a criminal history category of III, establishing a sentencing range of 37 to 46 months. The PSR also recommended an upward departure to a sentence of 60 months based on Carr's criminal history. The district court, adopting the findings in the PSR, concluded that the Guidelines did not adequately account for Carr's criminal history and departed upwardly to a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

sentencing range provided for by criminal history category V. The court imposed a 60 months prison term, three years supervised release, and a \$50.00 fine. Carr appeals. We affirm.

DISCUSSION

Carr first argues that the district court stated unacceptable reasons for the upward departure. Section 4A1.3, p.s. of the Sentencing Guidelines explicitly authorizes departure "[i]f reliable information indicates that the criminal history does not adequately reflect the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes" In reviewing a departure from the guidelines, we examine two issues: (1) was the departure based on acceptable reasons and (2) was the departure reasonable. 18 U.S.C. § 3742(e)(3), (f)(2); United States v. Webb, 950 F.2d 226, 231 (5th Cir. 1991), cert. denied, 112 S. Ct. 2316 (1992).

The findings of the district court regarding the upward departure, although written before we handed down the en banc decision in United States v. Lambert, 984 F.2d 658 (5th Cir. 1993) (en banc), satisfy the procedural requirements of that decision. The district court is not obligated to perform "a ritualistic exercise in which it mechanically discusses each criminal history category it rejects en route to the category it selects." Id. at 663. "[T]he district court's reasons for rejecting intermediate categories will clearly be implicit, if not explicit, in the court's explanation for its departure from the category calculated under the guidelines and its explanation for the category it has

chosen as appropriate." Id. Implicit in the district court's explanation are the reasons it rejected a lesser departure.

The district court specifically explained that the exclusion of the stale 1967 conviction and the similarity of the instant offense to Carr's two prior charges were aggravating circumstances not adequately considered by the Guidelines. The court also detailed those factors, such as the victims' loss of large amounts of money, the potential of inflicting damage to financial institutions, and the manipulation and deceit involved in the acts, that contributed to the seriousness of the past convictions. Contrary to Carr's argument, the criminal history mechanism adopted by the Guidelines does not account for the extent of the seriousness of all Carr's past crimes. See U.S.S.G. § 4A1.3, p.s. Thus, the reasons cited by the district court to support a departure are acceptable. See United States v. Jones, 905 F.2d 867, 869, 870 & n.4 (5th Cir. 1990).

We turn to whether the departure of 14 months from the guideline range was reasonable. We conclude that it was. The 60 month sentence was 3 months longer than the high end of category IV, the category in which Carr would have fallen if the 1967 conviction had not been time barred. In light of the serious nature of the past crimes and the similarity of those crimes to the present one, the 14 months departure is not disproportionate. Accordingly, the district court did not abuse its discretion. See United States v. Davidson, 984 F.2d 651, 654 (5th Cir. 1993).

Carr also asserts that because he offered sufficient evidence

of physical impairment to prove that incarceration would interfere with his medical treatment, the district court erred by denying his motion for a downward departure under U.S.S.G. § 5H1.4, p.s. We will only review a district court's refusal to depart from the Guidelines if the refusal is in violation of the law. United States v. Mitchell 964 F.2d 454, 462 (5th Cir. 1992). The district court's comments reflect a reasoned balance between the statutory and sentencing guidelines, Carr's health, and the medical treatment that Carr would receive in prison; therefore, the district court's refusal to depart downward was not a violation of the law. See United States v. Guajardo, 950 F.2d 203, 207-08 (5th Cir. 1991), cert. denied, 112 S. Ct. 1773 (1992).

For the foregoing reasons, the judgment of the district court is AFFIRMED.