

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3627
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KERRY KIRBY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR-91-477-N
- - - - -

March 19, 1993

Before KING, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:*

Appellant Kerry Kirby challenges his sentence on grounds that he should have received a two-level reduction in his base offense level for acceptance of responsibility and that he should not have been assessed a two-level increase in his base offense level for obstruction of justice. We find no error in the district court's judgment and we AFFIRM.

"Determination by the district court whether the Defendant has accepted responsibility is entitled to even greater deference on review than that accorded under a simple 'clearly erroneous'

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

standard." United States v. Shipley, 963 F.2d 56, 58 (5th Cir.), cert. denied, 113 S.Ct. 348 (1992); see U.S.S.G. § 3E1.1, comment. (n.5). Unless there is no foundation for the district court's determination, this Court affirms. United States v. Perez, 915 F.2d 947, 950 (5th Cir. 1990).

The district court specifically found that Kirby, "by insisting that others are more responsible for his illegal scheme[,] has not clearly demonstrated a recognition and affirmative acceptance of his personal responsibility" A review of the record supports this finding.

The district court's factual determination that Kirby obstructed justice is reviewed for clear error. United States v. Edwards, 911 F.2d 1031, 1033 (5th Cir. 1990). "This test requires only that there be sufficient evidence in the record to support the district court's conclusion." Id.

Kirby reported to the probation officer that he had \$150 in assets and over \$4 million in debts. The Government provided to the probation officer the information that, subsequent to pleading guilty, Kirby had submitted a financial statement to a potential business client indicating Kirby's net worth as \$7.5 million, and that Kirby had purchased Virginia apartments for \$11.5 million.

The district court found that Kirby willfully obstructed or impeded justice by providing false information to the probation officer. The record contains sufficient evidence to support this conclusion; therefore, it is not clearly erroneous.

AFFIRMED.