

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3856
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MERRICK TATE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR 92-231-N

- - - - -
June 23, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Merrick Tate appeals the district court's two-level enhancement of his sentence for obstruction of justice pursuant to U.S.S.G. § 3C1.1. Tate argues that his failure to inform the probation officer about an unrecovered second bag of marihuana was not "material" within the meaning of § 3C1.1 because he had previously informed another government official of the fact. The district court's determination that Tate obstructed justice within the meaning of § 3C1.1 is reviewed for clear error.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

United States v. Bethley, 973 F.2d 396, 402 (5th Cir. 1992).

If a defendant willfully obstructs or impedes the administration of justice during an investigation, or if the defendant attempts to do so, the offense level rises two levels. U.S.S.G. § 3C1.1. The increase is warranted if a defendant provides materially false information to a probation officer in respect to an investigation for the court. U.S.S.G. § 3C1.1, comment. (n.3(h)). "`Material' . . . information . . . means . . . information that, if believed, would tend to influence or affect the issue under determination." U.S.S.G. § 3C1.1, comment. (n.5).

Although Tate was convicted only for the amount of marihuana recovered from the first bag, information concerning the second bag of marihuana was material in that the probation officer was attempting to determine the relevant conduct underlying the offense. Tate's false information could have affected the probation officer's determination. See U.S.S.G. § 1B1.3, comment. (n. 2(a)(1)).

Tate also appeals the district court's denial of a two-level reduction for acceptance of responsibility. The guidelines allow a two-level reduction for accepting responsibility for the offense where the defendant has "clearly demonstrated a recognition and affirmative acceptance of personal accountability." United States v. Beard, 913 F.2d 193, 199 (5th Cir. 1990) (quoting U.S.S.G. § 3E1.1). "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' standard." United States v. Shipley, 963 F.2d 56, 58 (5th Cir.), cert. denied, 113 S.Ct. 348 (1992).

The district court determined that Tate had obstructed justice by providing materially false information to a probation officer. Application Note 1(c) of § 3E1.1 contemplates a defendant's voluntary and truthful admission to authorities of involvement in the offense and related conduct as an appropriate consideration in determining whether the defendant qualified for a reduction of acceptance of responsibility. This case is not an "extraordinary" case warranting a finding of both obstruction of justice and acceptance of responsibility. See United States v. Edwards, 911 F.2d 1031, 1034 (5th Cir. 1990).

AFFIRMED.