IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5094
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GLADYS H. REDEAUX,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
1:91 CR 117 1

April 23, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[*]

Gladys H. Redeaux pleaded nolo contendere to a one-count information charging that she knowingly made a false statement of a material fact in preparing a labor management report in violation of 29 U.S.C. § 439(b). The Government was prepared to show that Redeaux, in her capacity as Treasurer of Laborers International Union of North America, Local No. 853, reported

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

that there was a balance of $728 in the bank, knowing that there was no cash in the account.

The magistrate judge accepted the plea, and sentenced Redeaux to a term of imprisonment of five months, a one-year term of supervised release, a fine in the amount of $3,000, and a special assessment of $25. Redeaux filed an appeal from the sentence in the district court, and the district court affirmed the sentence as imposed by the magistrate judge.

On appeal, Redeaux contends that the evidence is insufficient to show that her conduct reached the level of criminal activity. Redeaux entered a plea of nolo contendere; thus, she may not raise a sufficiency claim. "A plea of guilty admits all the elements of a formal criminal charge and waives all non-jurisdictional defects . . . ." U.S. v. Smallwood, 920 F.2d 1231, 1240 (5th Cir.), cert. denied, 111 S.Ct. 2870 (1991). "Because a plea of nolo contendere is treated as an admission of guilt, the law applicable to a guilty plea is also applicable to a plea of nolo contendere." Carter v. Collins, 918 F.2d 1198, 1200 n.1 (5th Cir. 1990) (citation omitted).

Redeaux further asserts that the district court erred in calculating the amount of loss as $23,653.83 and increasing her offense level by six under U.S.S.G. § 2B1.1(b)(1). She argues that the amount of loss at the time she made a false statement was $728. She contends that no loss was suffered by anyone because, even though she was late, she eventually made all of the deposits.

The calculation of amount of loss is a factual finding that is reviewed for clear error. U.S. v. Wimbish, 980 F.2d 312, 313 (5th Cir. 1992), petition for cert. filed, __ U.S.L.W. ____ (U.S. Mar. 17, 1993) (No. 92-7993). "[T]he loss need not be determined with precision. The court need only make a reasonable estimate of the loss, given the available information." U.S. v. Whitlow, 979 F.2d 1008, 1012 (5th Cir. 1992) (internal quotation and citation omitted). In the commentary to U.S.S.G. § 2B1.1, loss is defined as "the value of the property taken, damaged, or destroyed."

At sentencing, the district court heard testimony by the investigator from the U.S. Department of Labor, who conducted the routine compliance audit of Local 853. In August 1990, the investigator discovered that there were 39 instances between January 1988 and January 1990 where bank deposits of union funds totalling over $23,000 were delayed for over ten days. Redeaux indicated that she had taken the funds for her personal use as an informal, unauthorized loan and that she had repaid all of the money. Even though Local 853 was not permanently deprived of the $23,653.83, when Redeaux took that money for her own use, she put Local 853 "at risk of losing" that amount. See Wimbish, 980 F.2d at 316. The district court's determination was not clearly erroneous.

Finally, Redeaux contends that the district court erred in increasing her offense level by two points under § 2B1.1(b)(5) upon a finding that she had engaged in more than minimal planning

in committing the offense.[1] She argues that her actions were merely opportune and that she took no significant steps to plan to commit the offense.

"Whether or not a defendant engages in more than minimal planning is a fact question reviewed under the clearly erroneous standard." U.S. v. Barndt, 913 F.2d 201, 204 (5th Cir. 1990). "`More than minimal planning' is deemed present in any case involving repeated acts over a period of time, unless it is clear that each instance was purely opportune." U.S.S.G. § 1B1.1, comment. (n.1(f)).

The evidence showed that Redeaux misappropriated more than $20,000 in 39 transactions over a period of two years. She falsified records to show that the funds were in transit when, in fact, they were taken for her personal use. Further, she put notes in the records to remind herself to repay the money. A finding that the instances required more than minimal planning was not clearly erroneous.

Redeaux's judgment of conviction and sentence is AFFIRMED.

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[1] At the first sentencing hearing, defense counsel stated that he had no problem with ¶ 14 of the PSR, which provided a two-level increase for more than minimal planning. On appeal to the district court, Redeaux raised the issue whether the magistrate judge's finding of "more than minimal planning" was clearly erroneous.