

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5298

Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

AHMED U. SHAH,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(1:92 CR 007 (18))

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September 3, 1993

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Ahmed Ullah Shah pleaded guilty to making a building available for storing and distributing 3,4-methylenedioxy-methamphetamine (MDMA), in violation of 21 U.S.C. § 856(a)(2). The district court sentenced Shah, pursuant to the United States Sentencing Guidelines (the Guidelines), to twenty-seven months imprisonment and three years supervised release and ordered Shah

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

to pay a fifty dollar mandatory assessment. Shah now appeals his sentence, arguing that the district court erred in (1) refusing to grant him a downward departure because of his poor health, and (2) refusing to grant him a two-level decrease in offense level for his acceptance of responsibility. We affirm.

I.

Shah argues that the district court should have granted him a downward departure because he suffers from coronary artery disease, fatigue, blurred vision, and weight loss. In particular, he argues that the district court's denial of a downward departure constitutes a violation of law--namely, 18 U.S.C. § 3553(a)(2)(D). He also contends that the district court erred by not making any findings in support of its decision not to depart downward.

Shah correctly notes that we will not review a district court's refusal to depart from the Guidelines unless the refusal was in violation of the law. See United States v. Hatchett, 923 F.2d 369, 372 (5th Cir. 1991). Shah then argues that 18 U.S.C. § 3553(a)(2)(D) requires courts to consider "the need for the sentence imposed . . . to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." (emphasis added). He reasons that the district court's refusal to grant a downward departure violates § 3553(a)(2)(D). We disagree. Section 3553(a)(2)(D) does not, under a straightforward reading,

require courts to depart from the guidelines whenever the defendant is in poor health.

Moreover, in United States v. Guajardo, 950 F.2d 203 (5th Cir. 1991), cert. denied, 112 S. Ct. 1773 (1992), we rejected a similar claim. The defendant in that case, like Shah, argued that, because his advanced age and poor health were not adequately considered by Guidelines, a departure was warranted. We rejected that argument and concluded that the Guidelines adequately took into account such issues. We reasoned that U.S.S.G. § 5H1.1, when read in conjunction with U.S.S.G. § 5H1.4, "implies that there may be extraordinary circumstances where age and health may be relevant to the sentencing decision." Guajardo, 950 F.2d at 208. With respect to the defendant's specific argument in Guajardo, however, we determined that there was nothing about his age or health--he had cancer in remission, high blood pressure, a fused right ankle, an amputated left leg, and a drug dependency problem--that justified a downward departure. See id.

Like the district court's decision in Guajardo, the district court's refusal to depart downward in Shah's case does not rise to the level of a "violation of law." Shah's evidence of poor health--namely, his coronary artery disease, fatigue, blurred vision, and weight loss--is no more extraordinary than the evidence of poor health offered by the defendant in Guajardo. In short, we conclude that Shah has not demonstrated that his medical conditions were extraordinary enough to justify a

downward departure. See also United States v. Hilton, 946 F.2d 955, 960 n.5 (1st Cir. 1991); United States v. Carey, 895 F.2d 318, 324 (7th Cir. 1990).

As for Shah's related contention that the district court erred by refusing to make specific findings in support of its decision not to depart downward, we conclude that it is also without merit. In United States v. Mueller, 902 F.2d 336, 347 (5th Cir. 1990), we specifically stated that a district court "need not make any factfindings in support of its decision not to depart from [the] guidelines unless such findings would be needed to show the sentence was imposed not in violation of law." Because, as explained above, we can determine without findings that Shah was not sentenced "in violation of law," the district court did not need to justify its refusal to depart downward with a specific factfinding that Shah's medical conditions were not "extraordinary."

## II.

Shah's second complaint on appeal is that the district court erred in not decreasing by two his offense level, pursuant to U.S.S.G. § 3E1.1, for his acceptance of responsibility. He argues specifically that the district court based its finding of no acceptance of responsibility on unreliable information. He further contends that the district court erroneously relied on allegations concerning his conduct with respect to a previously dismissed conspiracy charge.

A defendant's offense level will be decreased by two only if he clearly accepts responsibility for the offense of conviction. See U.S.S.G. § 3E1.1. Our review of a district court's acceptance of responsibility determination is, as Shah concedes, even more deferential than the clear error standard of review. See United States v. Watson, 988 F.2d 544, 551 (5th Cir. 1993). As we explained in United States v. Roberson, 872 F.2d 597, 610 (5th Cir.), cert. denied, 493 U.S. 861 (1989):

The standard of review under this provision is more deferential than under the clear error standard, because the sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility. For that reason, the determination of the sentencing judge is entitled to great deference on review and should not be disturbed unless it is without foundation.

We cannot conclude that the district court's determination that Shah did not accept responsibility is "without foundation." Shah's suggestions that the district court based its determination on (a) information from two unreliable sources--namely Boris Miranda and Leslie Bonilla, and (b) Shah's failure to accept responsibility for the dismissed conspiracy charge, are devoid of merit. The district court based its finding in this regard on Shah's "complete lack of candor with the court [and] with the agents" on the question of whether he knew that drugs were being stored in his house. There was abundant evidence in the presentence investigation report, as well as at the sentencing hearing, that Shah in fact knew drugs were being stored in his home--despite his assertions to the contrary. The district court's finding that Shah had not clearly accepted

responsibility for the offense of conviction is amply supported by the record.

III.

For the foregoing reasons, we affirm the district court's judgment of conviction and sentence.