IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7199
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO RODRIGUEZ,

Defendant-Appellee.

- - - - - - - - - - -

Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-L-91-166-02

- - - - - - - - - - -

(January 21, 1993)

Before GARWOOD, SMITH, and EMILIO GARZA, Circuit Judges.

PER CURIAM:[*]

Pedro Rodriguez challenges the district court's findings about the quantity of drugs on which his sentence was based. We review only for clear error. United States v. Mitchell, 964 F.2d 454, 457 (5th Cir. 1992). If a defendant is convicted of a conspiracy involving a controlled substance, the offense level is usually the same as if the object of the conspiracy had been completed. U.S.S.G. § 2D1.4(a). However, "where it is established that the conduct was neither within the scope of the defendant's agreement, nor was reasonably foreseeable in

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

connection with the criminal activity the defendant agreed to jointly undertake, such conduct is not included in establishing the defendant's offense level under this guideline." Mitchell, 964 F.2d at 458 (quoting U.S.S.G. § 1B1.3, note 1).**

In a tape-recorded statement, Rodriguez told an undercover agent that he had enough money to purchase 300 pounds of marijuana. Rodriguez now contends that he was going to buy only part of the marijuana. This assertion contradicts his plea of guilty to conspiracy. The trial court "is not bound to accept a defendant's own declarations, made with the purpose of reducing his sentence, about the circumstances of the crime." United States v. Fields, 906 F.2d 139, 142 (5th Cir.), cert. denied, 111 S.Ct. 200 (1990). The evidence adduced at the hearing supports the district court's finding that Rodriguez knew that the deal was for 300 pounds.

In arriving at an approximation of the amount of a controlled substance reasonably foreseeable by the defendant, the court may consider any information that has a "`sufficient indicia of reliability to supports it probable accuracy.'" United States v. Thomas, 963 F.2d 63, 64-65 (5th Cir. 1992)(quoting U.S.S.G. § 6A1.3, policy statement). Thus, the district court was not bound to consider only those factors listed in § 2D1.4, note 2, in makings its determination.

The district court is not required "to mouth any particular magic words or make a talismanic incantation of the exact

---

** If the defendant is convicted of a conspiracy, § 2D1.4(a) directs the court to § 1B1.3 to determine relevant conduct.

phraseology" of the rule, statute, or guideline applicable to its finding. See United States v. Piazza, 959 F.2d 33, 37 (5th Cir. 1992)(construing Fed. R. Crim. P. 32(c)(3)(D)). The district court's findings clearly established that the court approximated the amount of marijuana foreseeable to Rodriquez to be 300 pounds.

Rodriquez has not shown that he was unable to present any particular evidence or argument to the district court. The district court merely informed Rodriquez that he had already heard the evidence that he was attempting to introduce and did not want to "try this whole case." Where there are disputed facts material to the sentencing decision, the district court must resolve those facts and cause the record to reflect its resolution thereof. See United States v. Sherbak, 950 F.2d 1095, 1098 (5th Cir. 1992). The district court need not hear evidence that has already been presented or arguments that have already been advanced. The judgment of the district court is AFFIRMED.