

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7473
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

DELA C. BARRETT, JR.,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. CR-S-90-00024(G)

- - - - -
August 17, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Dela C. Barrett, Jr.'s sole challenge on this appeal is to the district court's upward departure. An upward departure will be affirmed on appeal if (1) the district court provided acceptable reasons for the departure and (2) if the departure was reasonable. United States v. Webb, 950 F.2d 226, 231-32 (5th Cir. 1991), cert. denied, 112 S.Ct. 2316 (1992).

The district court gave two reasons for departing upward: (1) that Barrett regularly used violence to operate his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

continuing criminal enterprise (CCE); and (2) the size of Barrett's CCE, which involved up to thirty people. Both of these reasons are acceptable under U.S.S.G. § 2D1.5, comment. (n.2), and both of these reasons were upheld by this Court when it reviewed Barrett's original sentence. See Barrett at 7-8.

Barrett challenges the district court's failure to explain how much weight it gave to each of these factors, but the district court is not required to give the reasons behind the extent of its departure. United States v. Siciliano, 953 F.2d 939, 943 (5th Cir. 1992) (citation omitted). All that is required in this regard is that, under 18 U.S.C. § 3553(c), "the sentencing judge state in open court the specific reasons for the departure." Id.

Barrett also argues that appellate review of his sentence is hampered by the district court's failure to articulate a guideline "bench mark" in order to measure the reasonableness of the departure, but this Court already noted in Barrett's first appeal that the guideline sentence was 240 months. See Barrett at 6-7.

The district court departed upward by a total of 180 months (15 years). Albeit a substantial one, the departure in the instant case is not the largest upheld by this Court. See, e.g., United States v. Fitzhugh, 984 F.2d 143, 147 (5th Cir. 1993) (affirming twenty-five year upward departure). In Barrett's first appeal, this Court already detailed the litany of violent behavior which characterized Barrett's control over his marijuana distribution network. Barrett at 8 & n.5. The Court also noted

that 18 U.S.C. § 848 requires the participation of only five people to qualify as a CCE; Barrett's CCE was "massive," actively involving up to thirty people operating nation-wide. Barrett at 2, 8, 8 & n.5, 2. Based on these facts, Barrett's sentence is AFFIRMED.