

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8295
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID VILLAREAL,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. 92-CR-47-ALL

- - - - -
March 17, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

David Villareal appeals the sentence rendered by the district court pursuant to a conviction for drug trafficking, arguing no evidence was offered to support a 2-point enhancement to the offense level based on trafficking near a protected location. Determinations by the district court relative to sentencing matters are findings of fact subject to the "clearly erroneous" standard of review. United States v. Alfaro, 919 F.2d 962, 966 (5th Cir. 1990). In making a sentencing determination,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the district court is permitted to rely on information presented in the PSR, as long as the information has "some minimum indicium of reliability." United States v. Vela, 927 F.2d 197, 201 (5th Cir. 1991), cert. denied, 112 S.Ct. 214 (1991). A PSR based on the results of a police investigation generally bears sufficient indicia of reliability as evidence to be considered by the trial judge in making factual determinations relative to sentencing. Alfaro, 919 F.2d at 966. Not only does the defendant bear the burden when seeking a decrease in the sentence level, but he also "bears the burden of demonstrating that information the district court relied on in sentencing is `materially untrue.'" Vela, 927 F.2d at 201.

Villareal's argument that the Government failed to present evidence in support of his drug trafficking near a protected location is without merit as he was the party responsible for rebutting the disputed matters in the PSR and proving that the facts contained in the PSR were materially untrue. The district court relied on information having an indicium of reliability which Villareal failed to rebut. Accordingly, the trial court did not clearly err in increasing the offense level based on the PSR; therefore, the sentence is AFFIRMED.