

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8447
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

GUILLEBALDO SALAZAR,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-91-CR-94
- - - - -
(June 22, 1993)

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Guillebaldo Salazar challenges the district court's denial of a two-level reduction in his base offense level for acceptance of responsibility. The district court denied Salazar the two-level reduction based on the presentence investigation report (PSR), concluding that he had lied repeatedly concerning his role in the instant offense. For example, Salazar informed the probation officer that his involvement in the heroin sale at issue was only peripheral, that he had never acted as a "broker"

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in a narcotics transaction before, and that he was receiving no monetary compensation for his involvement in the transaction. He also stated that he had no knowledge of the transaction involving six ounces of black tar heroin. The findings made by the probation officer in the PSR, which were relied upon by the district court, do not support Salazar's explanation.

It was established that Salazar actually negotiated with the confidential informant for up to nine ounces of black tar heroin, though the district court ultimately concluded that under the relevant conduct provisions Salazar should be sentenced based upon six ounces, despite the fact that he only possessed two ounces at the time of his arrest. To be entitled to the two-level reduction a defendant must accept responsibility for all relevant conduct. United States v. Alfaro, 919 F.2d 962, 968 (5th Cir. 1990). Refusal to accept responsibility for all related conduct provides grounds for denial of the two-level reduction for acceptance of responsibility. Id. at 968.

There was also a post-arrest statement by Salazar regarding the compensation he expected to receive from De La Cruz for transporting the two ounces of heroin, contradicting his statement that he did not expect to receive any compensation for his role in the transaction. Moreover, the PSR is replete with references to Salazar's activities as a narcotics broker, clearly refuting his statement that his involvement in the instant offense was the only time he had ever acted as a broker in a narcotics transaction. A defendant's attempt to minimize his role in the offense may constitute grounds for denying the two-

level reduction. United States v. Shipley, 963 F.2d 56, 59 (5th Cir.), cert. denied, 113 S.Ct. 348 (1992).

Although Salazar argues that the district court penalized him for not accepting responsibility for earlier negotiations for cocaine and marijuana, those earlier references were used only to refute Salazar's contention that his participation in the instant offense was his first involvement in narcotics trafficking. Moreover, Salazar's statements also denied involvement in the earlier negotiations for black tar heroin which culminated in the two-ounce transaction. Salazar's sentence is AFFIRMED.