

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 92-8558  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE LUIS DE LEON,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. DR-92-CR-45-3  
- - - - -

June 24, 1993

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

PER CURIAM:\*

Jose Luis De Leon challenges the sentence he received as a result of a conviction for the offense of conspiracy to possess with the intent to distribute marijuana.

De Leon relies on United States v. Melton, 930 F.2d 1096, 1099 (5th Cir. 1991), for his assertion that the district court must articulate the factual basis for refusing to accord a defendant minor role status under U.S.S.G. § 3B1.2. Unlike this case, the Fifth Circuit noted in Melton that the record was

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

inadequate for appellate review and Melton had requested, but not received clarification of the judge's finding. Melton, 930 F.2d at 1099. No such request was made by De Leon.

Although district courts are encouraged to supply specific factual findings, a simple statement that the defendant was not a minor participant suffices as a factual finding. United States v. Gallegos, 868 F.2d 711, 713 (5th Cir. 1989). In this case, the record, including the PSR, sufficiently reflects the district court's reasoning.

De Leon also asserts that he was entitled to the reduction because he was the lesser participant in the criminal activity. Factual findings underlying the district court's imposition of criminal sentences are reviewed under a "clearly erroneous" standard. United States v. Mejia-Orosco, 867 F.2d 216, 220 (5th Cir.), cert. denied, 492 U.S. 924 (1989). Whether a participant in a criminal endeavor should be accorded minor role status is a factual determination entitled to great deference. United States v. Devine, 934 F.2d 1325, 1340 (5th Cir.), cert. denied, 112 S.Ct. 349 (1991).

De Leon's argument that a scout should be accorded similar treatment as a courier for a single transaction involving a small amount of drugs is not persuasive. This Court has ruled that courier status does not necessarily equate with minor/minimal role status, as a defendant may be a courier without being substantially less culpable than the average participant. United States v. Rojas, 868 F.2d 1409, 1410 (5th Cir. 1989).

The PSR does not support De Leon's argument that he must be

less culpable than the other participants because the marijuana was not in his car and he was involved in only one transaction. There is no evidence that this single transaction was part of a larger marijuana conspiracy, nor does the PSR advert to significantly more substantial activity by Reyes-Balderas and Hernandez. Even if Reyes-Balderas hired De Leon to act as scout, there is no evidence to suggest that De Leon was "peripheral" to Reyes-Balderas' activities. The PSR and the Addendum thereto state that De Leon was recruited to act as a scout for Reyes-Balderas, who De Leon knew would be transporting marijuana. The PSR Addendum noted that, because of De Leon's role as scout and because he knew of the activities of his codefendant Reyes-Balderas, he was not entitled to a mitigating role. Therefore, the district court's determination that De Leon was not entitled to a mitigating role adjustment was not clearly erroneous.

AFFIRMED.