UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-8593
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

GASPAR MONTOYA,

Defendant-Appellant.

Appeals from the United States District Court
For the Western District of Texas
(MO 92 CR 61 1)

April 21, 1993

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Gaspar Montoya pleaded guilty to conspiracy to laundering money. In the presentence report (PSR), the probation officer found that the offense conduct indicated that Montoya directed the actions of his co-conspirators in the money-laundering scheme and recommended a four-level upward adjustment for his leadership role in the offense. PSR, ¶ 22. The probation officer also recommended

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

against a two-level reduction of the offense level for acceptance of responsibility. Id. at ¶ 15-16.

Montoya filed objections to these recommendations. PSR Addendum, 18. The district court overruled the objections and sentenced Montoya to the maximum statutory term of imprisonment of 60 months, to be followed by a three-year term of supervised release.

Montoya argues that there was no evidence presented to support the district court's finding that he held a leadership role in the transaction on which the conviction was based and, therefore, the finding was clearly erroneous.

The review of a sentence under the guidelines is limited to a determination of "whether the sentence was imposed in violation of the law or as a result of an incorrect application of the sentencing guidelines." United States v. Follin, 979 F.2d 369, 375 (5th Cir. 1992). An application of the guidelines based on factual findings will be affirmed if they are not clearly erroneous. Id. "A factual finding is not clearly erroneous as long as it is plausible in light of the record as a whole." Id.

A defendant's offense level may be increased by four levels if he "was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1. Factors which may be considered by the district judge in determining whether a defendant held a leadership role include the exercise of decision making authority, the nature of his participation in the commission of the offense, the recruitment of

accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, and the degree of control and authority exercised over the others. U.S.S.G. § 3B1.1, comment. (n.3). The district court may rely on information contained in the pre-sentence report in making factual sentencing determinations, if the information has "some minimum indicium of reliability." United States v. Shipley, 963 F.2d 56, 59 (5th Cir.), cert. denied, 113 S. Ct. 348 (1992) (citation omitted).

The pre-sentence investigation revealed Montoya provided $92,259 in currency to co-defendants, Romero and Beamann, who were affiliated with Farmers Construction Company (FCC). PSR, ¶ 6. The funds were used to purchase unpaid invoices from FCC which were placed in the name of Montoya's company, Gasper Tractor Service. Id. Beamann used $45,000 of the funds to purchase a cashier's check and money orders from co-defendant Alexander, a vice-president of Commercial State Bank of Andrews, and deposited them into the FCC business account at the First National Bank. Id. Each of the deposits made in the FCC accounts were in amounts less than $10,000. Id. at ¶ 8. After the deposits were completed, FCC wrote checks totalling $85,902, payable to Gasper Tractor Service, and deposited the checks into that company's account. Id. at ¶ 6.

Juanita Barrera, an assistant vice-president of First National Bank, took personal money orders from Beamann and two bank money orders from Montoya, which Montoya had purchased for $6500 in currency at the bank. PSR, ¶ 9. Montoya purchased an additional

money order for $3500 and delivered it to Barrera. Id. Barrera, who was aware that Montoya was a drug dealer, used the money order to provide a $10,000 down payment on a mobile home for Montoya. Id.

Montoya provided co-defendant William Rich with currency in excess of $10,000 and instructed Rich to deposit funds in a manner to avoid currency transaction reports. PSR, ¶ 10. Rich made two separate deposits of $5000 each at two different financial institutions in Andrews, Texas. Id. Montoya also provided his brother, Jessie Montoya, with $5000 in currency on two consecutive days, and Jessie made separate deposits of the funds into the Gasper Tractor Service account in the First National Bank. PSR, ¶ 11.

Romero and Rich admitted that they were aware that Montoya was a drug dealer and that the currency was derived from the drug business. Id. at ¶ 12. They also acknowledged that the deposits of the currency were made to avoid filing currency transaction reports. Id.

In order to prove a money laundering violation, the Government must show that the defendant conducted a financial transaction involving proceeds from an illegal transaction, and structured the transaction so as to disguise the source or nature of the proceeds or to avoid state or federal transaction reporting requirements. 18 U.S.C. § 1956(a)(B)(i)(ii). Financial institutions are required to report transactions in currency in amounts over $10,000. 31 U.S.C. § 5313(a). A person who structures or assists in

structuring transactions for the purpose of evading currency transaction reporting requirements or causes a financial institution to fail to file the required reports is acting in violation of 31 U.S.C. § 5324.

The information contained in the PSR reflected Montoya recruited his four co-defendants and two other individuals to assist him in laundering the proceeds of his drug-trafficking operation. The evidence reflected that Montoya instructed his accomplices to structure deposits of money into his account in such a manner as to avoid the currency transaction reporting requirements. The majority of the laundered funds were placed into Montoya's business account.

"[T]he facts necessary to support an adjustment in sentencing must only be proved by a preponderance of the evidence." United States v. Hinojosa, 958 F.2d 624, 633 (5th Cir. 1992). The preponderance of the evidence reflects that Montoya held a leadership role in a money laundering scheme involving five or more participants.

Montoya argues that the district court failed to make specific findings with respect to his leadership role in the offense. "[T]he district court is not required under section § 3B1.1 to make any finding of fact more specific than that the defendant was a `leader' or `organizer'." United States v. Rodriguez, 897 F.2d 1324, 1327 (5th Cir.), cert. denied, 111 S. Ct. 158 (1990). "The court is required to resolve specifically disputed issues of fact if it intends to use those facts as a basis for its sentence." Id.

During the sentence hearing, Montoya's counsel asserted that Montoya was recruited by co-defendant Romero, who devised the money laundering scheme. Objections which are merely in the form of unsworn assertions are considered to be unreliable and should not be considered by the district court. United States v. Lghodaro, 967 F.2d 1028, 1030 (5th Cir. 1992). Therefore, the trial court did not err in overruling the objection and relying on the information contained in the PSR.

Montoya argues that the district court may not look beyond the transaction underlying the offense of conviction in determining the number of participants involved in the criminal activity. The criminal activity considered by the district court in making an adjustment under § 3B1.1 must be "anchored to the transaction leading to the conviction." United States v. Whitlow, 979 F.2d 1008, 1011 (5th Cir. 1992). However, the district court may "consider all conduct linked to the transaction[,] . . . even if it falls outside the four corners of the conviction itself." Id. This argument is without merit.

Further, Montoya did not object to the finding in the PSR that the scheme involved five participants and, thus, this factual issue is not subject to review on appeal. United States v. Sherbak, 950 F.2d 1095, 1101 (5th Cir. 1992).

Montoya contends that the district court erred in refusing to adjust the offense level downward for his acceptance of responsibility. Montoya argues that his acceptance of responsibility was evidenced by the fact that he pleaded guilty,

did not force the Government to go to trial, and because he admitted the source of the currency.

A defendant is entitled to a two-level reduction in the offense level if he "clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct." U.S.S.G. § 3E1.1. A district court's determination of whether a defendant has accepted responsibility is entitled to even greater deference on review than that accorded under a clearly erroneous standard. Shipley, 963 F.2d at 58.

The entry of a guilty plea prior to trial does not entitle a defendant to a reduction for acceptance of responsibility if the evidence reflects the defendant has not truthfully admitted his involvement in the offense and related conduct. Id. A defendant who attempts to minimize his leadership role in the offense, in spite of reliable evidence to the contrary, is not entitled to a reduction for acceptance of responsibility. Id. at 58-59.

As discussed previously, Montoya denied his leadership role in the scheme and also claimed that a portion of the money paid to Gasper Tractor Service was for services rendered. See PSR Addendum, 17. Because Montoya did not accept responsibility for all of his relevant criminal conduct, the district court did not err in denying him the two-level reduction.

Montoya argues that the district court abused its discretion in imposing his sentence to run consecutively to a sentence imposed in another case in the Western District of Texas. Montoya argues that the district court failed to discuss the factors set out in 18

U.S.C. § 3553. Id. at 8. Montoya was sentenced in an unrelated case on January 15, 1992, following a guilty plea to possession of a firearm during a drug-trafficking crime.

Generally, multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently. 18 U.S.C. § 3584; see also U.S.S.G. § 5G1.3 (if defendant is serving a sentence or has been sentenced for another offense not yet discharged, the sentence for the instant offense shall be imposed consecutively). A district court has broad discretion in deciding to impose a sentence consecutively or concurrently. United States v. Parks, 924 F.2d 68, 72 (5th Cir. 1991). The district court should consider the guidelines and policy statements issued by the Sentencing Commission in making the sentencing decision. Id.

During the sentencing hearing, defense counsel requested that the court impose a sentence concurrent to the January 1992 sentence, so that Montoya would have a greater opportunity to spend time with his wife and child and to improve his potential for earning a living. The district court recognized that the defendant's imprisonment would be a hardship on his family, but noted that the laundering offense was serious and imposed a consecutive sentence. Montoya has not shown that the district court abused its discretion in imposing the consecutive sentence.

We AFFIRM the judgment of the district court.