IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8604
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUBEN RAUL ORNELAS,

Defendant-Appellant.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-91-CR-346-4

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June 23, 1993

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

PER CURIAM:*

Ruben Raul Ornelas was convicted by a jury for possession with intent to distribute a quantity of marijuana and conspiracy to commit the same, in violation of 21 U.S.C. §§ 841 and 846.

Ornelas argues that he should have been sentenced based on the quantity that was seized, less than 500 pounds, because there was no factual basis to support the district court's finding that he was aware of negotiations to deliver 1,500 pounds of marijuana.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

A sentence imposed by the trial court will be upheld so long as the sentence was determined by a proper application of the guidelines to facts that are not clearly erroneous. United States v. Buenrostro, 868 F.2d 135, 136-37 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990). The activities of other participants in an illegal scheme can be considered as relevant conduct so long as the activities were reasonably foreseeable. § 1B1.3, comment. (n.1); see United States v. Thomas, 963 F.2d 63, 64 (5th Cir. 1992). A sentence must be based on information that contains "some minimum indicium of reliability." See United States v. Vela, 927 F.2d 197, 201 (5th Cir.), cert. denied, 112 S.Ct. 214 (1991).

The evidence presented at trial demonstrated that Ornelas was present during negotiations on the 1500-pound quantity. The district court also made a specific finding that Ornelas was aware of the 1500-pound agreement after Ornelas objected during the sentencing hearing. A finding that Ornelas was "aware" of the 1500-pound agreement as a participant in the conspiracy clearly encompasses the question whether the 1500-pound quantity was reasonably foreseeable.

Ornelas also argues that the district judge's articulated reasons for overruling his objection did not comply with Fed. R. Crim. P. 32(c)(3)(D). This argument lacks merit.

If the factual accuracy of the PSR is controverted by the defendant, Rule 32(c)(3)(D) requires the district court to make a specific finding. See Fed. R. Crim. P. 32(c)(3)(D). We have held that no "magic words" are required to comply with Rule

32(c)(3)(D) and that it suffices that the record reflects compliance with the rule. United States v. Piazza, 959 F.2d 33, 37 (5th Cir. 1992). In United States v. Sherbak, 950 F.2d 1095, 1099 (5th Cir. 1992), we refused to remand a sentence based on the lower court's adoption of the PSR alone which implicitly "weighed the positions of the probation department and the defense and credited the probation department's facts." Nor does Rule 32 "require a catechismic regurgitation of each fact ... the court has adopted by reference." Sherbak, 950 F.2d at 1099.

The record reflects that the district court complied with Rule 32(c)(3)(D) by considering the relevant factors and crediting the PSR's finding that Ornelas was aware of the negotiated 1500-pound quantity.

AFFIRMED.