

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9092
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN D. WALKER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-128-A
- - - - -
(November 1, 1993)

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

PER CURIAM:*

John D. Walker pleaded guilty to interference with commerce by robbery and use of a firearm during the commission of that offense and was sentenced to 136 months' imprisonment and three years' supervised release. Walker argues that the district court clearly erred in failing to reduce his sentence for acceptance of responsibility. He contends that he complied with most, if not all of the applicable criteria under U.S.S.G. § 3E1.1. He states that he truthfully admitted and did not falsely deny his relevant

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conduct and that the court did not make any determination of any act inconsistent with his acceptance of responsibility.

Whether a defendant has demonstrated acceptance of responsibility is a factual finding which is given even greater deference on review than under the clearly erroneous standard. United States v. Shipley, 963 F.2d 56, 58 (5th Cir.), cert. denied, 113 S.Ct. 348 (1992).

The sentencing guidelines provide for a two-level downward adjustment in offense level if a defendant "clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct." § 3E1.1(a) (Nov. 1990). "Entry of a guilty plea prior to commencement of trial combined with a truthful admission of involvement in the offense and related conduct will constitute significant evidence of acceptance of responsibility." § 3E1.1, comment. (n.3) (Nov. 1990). "However, this evidence may be outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility." Id.

Walker pleaded guilty before trial, but the Government and the probation officer did not believe that he was entirely truthful about his role in the offense. He tried to minimize his role by stating that the robbery was Brown's idea, and by asserting that he did not receive the bulk of the stolen money. A defendant's attempt to minimize his role in the offense is a sufficient reason to find that he did not accept responsibility. Shipley, 963 F.2d at 59-60. The district court's finding that

Walker did not clearly demonstrate acceptance of responsibility
was not clearly erroneous. Walker's sentence is AFFIRMED.