UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9568
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ROBERT S. JENKINS,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CR 92 291 A))

June 3, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Robert S. Jenkins, *pro se*, appeals his sentence for conspiracy to distribute marijuana, in violation of 21 U.S.C. § 846, and structuring monetary transactions to avoid reporting requirements, in violation of 31 U.S.C. § 5324(3). We **AFFIRM.**

I.

Jenkins pleaded guilty to conspiracy to distribute approximately 1200 pounds of marijuana and structuring $64,400 in currency transactions for the purpose of evading reporting

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[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

requirements. He was sentenced, *inter alia*, to a 70-month imprisonment term for the first offense and a concurrent 60-month term for the second.

II.

Jenkins contends only that the district court erred in calculating the amount of marijuana to be used in determining his base offense level under the Sentencing Guidelines. The district court, adopting the sentencing recommendations contained in the presentence investigation report (PSR), calculated a base offense level of 27, based on 1290 pounds of marijuana, a three-level reduction for acceptance of responsibility, and a two-level increase for role in the offense. This court will uphold the sentence if it results from a correct application of the guidelines to factual findings that are not clearly erroneous. ***United State v. Chavez***, 947 F.2d 742, 746 (5th Cir. 1991). Jenkins does not contend that any of the findings are clearly erroneous. Therefore, we review, *de novo* the application of the guidelines to those facts. ***United States v. Hooten***, 942 F.2d 878, 880 (5th Cir. 1991).

First, Jenkins contends that the 1290 pound figure should have been reduced by 600 pounds, which related to a transaction that had not yet occurred, notwithstanding his guilty plea to conspiracy to distribute approximately 1200 pounds. The district court did not err. The guidelines direct it to consider drug quantities involved in all transactions which are part of the same course of conduct or common scheme or plan as the offense of conviction. U.S.S.G. §§ 1B1.3(a)(2) & 2D1.1, comment. (nn.6 & 12); ***United States v. Moore***,

927 F.2d 825, 827 (5th Cir.), *cert. denied*, 112 S. Ct. 205 (1991). This may include amounts of drugs that have been negotiated for, but not distributed. U.S.S.G. § 2D1.1, comment. (n.12); ***Moore***, 927 F.2d at 827. Jenkins does not contest that he had arranged to purchase an additional 600 pounds of marijuana. That amount was properly included.

Second, Jenkins contends that the 600 pounds should not have been considered because he told the government about it pursuant to a cooperation agreement, citing U.S.S.G. § 1B1.8. But, that provision specifically states that it "shall not be applied to restrict the use of information ... known to the government prior to entering into the cooperation agreement". U.S.S.G. § 1B1.8(b)(1). The district court found, and Jenkins does not contest, that the government knew about Jenkins' plan to obtain the additional 600 pounds before his arrest. This finding was based upon a tape-recorded conversation in which Jenkins discussed the transaction.

Third, Jenkins contends that the district court erred in relying on U.S.S.G. § 2X1.1. Although the district court did refer to that section during sentencing, it adopted the recommendations of the PSR, which relied on § 2D1.1 in calculating the base offense level. Even assuming, *arguendo*, that the district court did rely on § 2X1.1, the 600 pounds were properly included under the relevant conduct provisions of § 1B1.3, which were also cited by the district court, rendering any error harmless. *See* ***United States v. Salazar***, 961 F.2d 62, 64 (5th Cir. 1992).

Finally, Jenkins contends that an amendment to U.S.S.G. § 2D1.4 in some unspecified manner impacted his sentence. Because he did not raise this issue in district court, we review only for plain error. ***United States v. Pigno***, 922 F.2d 1162, 1167 (5th Cir. 1991). The amendment to § 2D1.4 made no substantive change to the guidelines, but was enacted simply to "clarif[y] and simplif[y] the guideline provisions dealing with attempts and conspiracies in drug cases and conform[] the structure of these provisions to that of other offense guidelines that specifically address attempts and conspiracies". U.S.S.G. App. C, amend. 447, at 271. Jenkins' base offense level would have been the same under either the former § 2D1.4, or the amended § 2D1.1, comment. (n.12), which contains the same provisions regarding the weight of controlled substances under negotiation in uncompleted distributions. There is no error, plain or otherwise.

III.

For the foregoing reasons, the sentence is

AFFIRMED.