

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1124
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS EDWARD RACKSTRAW,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-10(6)-Y

- - - - -
August 18, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Thomas Edward Rackstraw pleaded guilty to distribution of 10.19 grams of cocaine base but was sentenced on the basis of 20 kilograms of cocaine base which the district court found had been distributed by the conspiracy in which Rackstraw participated (the "Fisher Organization"). "In drug distribution cases, the base offense level can reflect quantities of drugs not specified in the count of conviction if they were part of the same course

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of conduct or part of a common scheme or plan as the count of conviction." United States v. Moore, 927 F.2d 825, 827 (5th Cir.), cert. denied, 112 S. Ct. 205 (1991) (internal quotations omitted); see U.S.S.G. § 1B1.3(a)(2). The scope of illegal activity for which the defendant may be held accountable is limited to those acts and omissions of others which were "reasonably foreseeable" to the defendant. § 1B1.3(a)(1)(B).

Rackstraw offered no evidence to rebut the factual findings in the Probation Officer's report ("PSR"). Accordingly, the district court was free to adopt the facts in the PSR without further inquiry provided those findings had a sufficient evidentiary basis. United States v. Sherbak, 950 F.2d 1095, 1099-1100 (5th Cir. 1992). In determining whether the findings had a sufficient evidentiary basis, the district court could consider any information, so long as there were sufficient indicia of reliability to support its probable accuracy. United States v. Angulo, 927 F.2d 202, 204-05 (5th Cir. 1991); see U.S.S.G. § 6A1.3, comment. On review, this Court examines the entire record to determine whether the district court's factual findings were clearly erroneous. United States v. Murillo, 902 F.2d 1169, 1173 (5th Cir. 1990). Based upon that examination and considering the duration and extent of Rackstraw's involvement in the criminal conspiracy, we hold that the district court's conclusion that it was reasonably foreseeable to Rackstraw that the conspiracy was dealing in quantities of cocaine base equal to 20 kilograms was not clearly erroneous.

Rackstraw also challenges the district court's decision to increase his offense level because firearms were possessed by other members of the Fisher Organization during the commission of the offense. Because firearms are "tools of the trade" for persons involved in illegal drug activities, sentencing courts may infer that the defendant should have foreseen a codefendant's possession of a dangerous weapon during the commission of a jointly undertaken criminal activity involving the distribution of drugs. United States v. Aguilera-Zapata, 901 F.2d 1209, 1215-16 (5th Cir. 1990). Investigating agents considered the Fisher Organization "well armed and dangerous." The size of the Fisher Organization's arsenal and degree of Rackstraw's participation in the conspiracy provide ample support for concluding that it was reasonably foreseeable to Rackstraw that his co-conspirators would employ firearms in furtherance of their illegal activities. The finding of foreseeability is implicit in the district court's reasoning and, unlike Aguilera-Zapata, it does not appear that the district court based its conclusion only on the fact of possession by a co-conspirator. See 901 F.2d at 1216.

AFFIRMED.