

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1675

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

COLBERT THOMAS, a/k/a Colbert Semple,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(3:92-CR-412-R(22))

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(June 2, 1994)

Before GOLDBERG, KING and WIENER, Circuit Judges.

PER CURIAM:\*

Colbert Thomas was convicted on one count of conspiracy to violate 21 U.S.C. § 841(a)(1) by distributing marijuana in excess of 1,000 kilograms and on two counts of using the telephone to facilitate a drug transaction in violation of 21 U.S.C. § 843(b). Thomas was sentenced to serve 135 months imprisonment on the conspiracy count and 48 months imprisonment on the two telephone counts, the sentences on the telephone counts to be served

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

concurrently with each other and with the sentence on the conspiracy count.

On appeal, Thomas argues that the district court incorrectly denied his motion for a new trial. That motion asserted that juror Maxine Allen had engaged in juror misconduct by failing to inform the district court that she knew defense witness Karen Carter and that Ms. Allen was prejudiced against foreigners. The district court did not err in denying the motion for a new trial. Thomas has not made a showing that Ms. Allen was less than honest with the district court in answering questions on voir dire sufficient to require the district court to conduct a hearing. Further, even if (as Thomas alleges) Ms. Allen's service as a juror prevented Ms. Carter from testifying, there was no prejudice to Thomas since Ms. Carter's testimony was cumulative of other evidence suggesting that there was no indication of drug activity at Thomas' work place.

Thomas also challenges the quantity of marijuana used as a basis for his sentence. A district court's findings about the quantity of drugs involved in an offense are factual findings, subject to a "clearly erroneous" standard of review. Evidence was introduced at trial about a number of different marijuana deals in which Thomas participated. The quantities of marijuana varied, depending upon the deal. The presentence report stated that from May 1990 until October 1992, the defendant received approximately twenty to forty pounds of marijuana from the Amayas once or twice a week. The presentence

report used a conservative estimate of twenty pounds of marijuana received per week for 124 weeks, or a total of 2,480 pounds during the time period. Thomas points out that Albert Amaya testified that he stopped dealing with Thomas during a period in 1990 that might mean that the total during the 1990-1992 time period was reduced by as much as 700 pounds. But the PSR did not consider all the other marijuana dealings that took place both before and during that time period, and the district court was entitled to take into account all of the evidence about such dealings. From the evidence presented to the district court, the district court's conclusion as to quantity was not clearly erroneous.

The judgment of conviction and sentence are AFFIRMED.