

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1756
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

DONALD STEVEN ROREX,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(5:93-CR-041-C(01))

(February 9, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Donald Rorex appeals the sentence he received for making a false claim to a government agency in violation of 21 U.S.C. § 287. Finding no error, we affirm.

I.

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 Pursuant to that rule, the court has determined that this opinion should not be published.

Rorex pleaded guilty to making false claims to the Internal Revenue Service ("IRS") by filing a false tax return in his name. The district court adopted the factual findings of the presentence report ("PSR") and sentenced Rorex to twenty-one months' imprisonment. Rorex appeals, contending that the district court erroneously applied U.S.S.G. § 3B1.3 (abuse of position of trust or use of special skill) and erroneously declined to apply § 3E1.1 (acceptance of responsibility).

Following a three-month tax return preparation course, Rorex began working for H&R Block as an income tax return preparer. He used his employer's files to obtain names, social security numbers, and financial information that he used to prepare ten false tax returns; he also prepared a false tax return using his own name. He filed these false returns using the IRS's electronic filing system.

To facilitate the scheme, Rorex created false W-2 forms and a false Employers Federal Annual Unemployment Tax Return. In addition to receiving refund checks from the IRS, Rorex used the electronic returns to obtain refund-anticipation loans from various banks.

II.

A.

Rorex contends that the district court erroneously applied U.S.S.G. § 3B1.3, which requires a two-level increase in the offense level if the defendant was in a position of trust or

possessed a special skill and used the position of trust or special skill in a manner that significantly facilitated the commission or concealment of the offense. United States v. White, 972 F.2d 590, 601 (5th Cir. 1992), cert. denied, 113 S. Ct. 1651 (1993); United States v. Brown, 941 F.2d 1300, 1304 (5th Cir.), cert. denied, 112 S. Ct. 648 (1991). The application of § 3B1.3 is a sophisticated factual determination reviewed under the clearly erroneous standard. United States v. Fisher, 7 F.3d 69, 70 (5th Cir. 1993); Brown, 941 F.2d at 1304.

Although the district court heard argument with respect to both the position of trust and use of special skills factors, it did not articulate with particularity the basis for applying § 3B1.3; rather, it adopted the PSR's findings and analysis. The PSR appears to have based the increase upon a finding that Rorex had both abused a position of trust and used a special skill. The record supports a finding that Rorex used a special skill; therefore, it is unnecessary to consider whether he abused a position of trust.

Rorex contends that he did not possess a special skill. The PSR appears to have concluded that his experience as a bookkeeper and tax preparer constituted a special skill. A "special skill" is a "skill not possessed by members of the general public and usually requiring substantial education, training or licensing." § 3B1.3, comment. (n.3).

Although Rorex never finished high school, he did operate a bookkeeping operation out of his home for over fourteen years. In

addition, he underwent three months of training to become a tax return preparer for H&R Block. This background suggests that Rorex had greater knowledge of bookkeeping and tax preparation than did the general public. The fact that Rorex knew that his scheme would be facilitated by filing false W-2 forms and a false employer tax return further suggests greater knowledge than that possessed by the general public. Based upon these facts, the district court could conclude that Rorex's experience in bookkeeping and tax return preparation constituted a special skill.

The record also supports a finding that Rorex used his special skill in a manner that significantly facilitated the commission or concealment of the offense. Rorex did not simply file a false tax return, an act within the capability of most persons; he relied upon his superior knowledge to prepare false W-2 forms and a false employer tax return in order to ensure the success of his scheme. Given this, the district court could conclude that Rorex's bookkeeping and tax return preparation skills significantly facilitated the commission or concealment of the offense.

B.

U.S.S.G. § 3E1.1 requires a two-level reduction in the offense level where a "defendant clearly demonstrates acceptance of responsibility for his offense." Rorex contends he clearly demonstrated acceptance of responsibility and, therefore, the district court erred by failing to reduce his offense level by two levels. Section 3E1.1 "requires a showing of sincere contrition on

the defendant's behalf to warrant the reduction" for acceptance of responsibility. United States v. Beard, 913 F.2d 193, 199 (5th Cir. 1990); see United States v. Reed, 882 F.2d 147, 150 (5th Cir. 1989). A district court's determination of whether a defendant has accepted responsibility is entitled to even greater deference than that given under a clearly erroneous standard. United States v. Kleinebreil, 966 F.2d 945, 953 (5th Cir. 1992).

Rorex suggests he was entitled to the two-level reduction because he waived his right to a detention hearing, promptly entered into plea negotiations resulting in a guilty plea within two weeks of his arrest, and truthfully admitted his wrongdoing. Although entry of a guilty plea prior to trial, combined with truthfully admitting the conduct comprising the offense of conviction, constitutes significant evidence of acceptance of responsibility, "this evidence may be outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility." § 3E1.1, comment. (n.3)

Rorex engaged in conduct inconsistent with an acceptance of responsibility and, therefore, was not entitled to the two-level reduction. After being informed that he was under investigation and that investigators were going to recommend prosecution, Rorex repeated the offense of conviction by filing a false claim with the IRS. Subsequently, Rorex was informed that he had been indicted and that an arrest warrant soon would be issued. Rorex informed the United States Marshals Service that he would surrender that day; however, he then left Texas for Colorado, where he was later

apprehended. Given this behavior, the district court did not err in denying Rorex a reduction for acceptance of responsibility.

AFFIRMED.