

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2228
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MOHAMMED T. BELLO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-92-0228-1
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

A district court's determination that a defendant played an aggravating role is a factual finding subject to the "clearly erroneous" standard of review. United States v. Alvarado, 898 F.2d 987, 993 (5th Cir. 1990). U.S.S.G. § 3B1.1(c) requires a two-level increase in a defendant's offense level if the defendant was an organizer, leader, manager, or supervisor in the criminal activity. As the party seeking the adjustment, the Government must establish the factual predicate justifying the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

adjustment by a preponderance of relevant and sufficiently reliable evidence. United States v. Elwood, 999 F.2d 814, 817 (5th Cir. 1993).

Bello argues that the information in the presentence report (PSR) was not reliable because it credited the self-serving statements of his co-conspirators over his. A presentence report generally bears sufficient indicia of reliability to be considered as evidence by the trial judge in making the factual determinations required by the Guidelines. Elwood, 999 F.2d at 817.

The PSR credits as its source an investigative report prepared by the U.S. Customs Service. The information provided to the Customs investigators by Bello's co-conspirator is consistent with the PSR's determination that Bello supervised at least two individuals. This information was substantiated by Bello's promise to pay the smuggler \$4,000, which was tape recorded by the authorities. The information in the PSR had sufficient indicia of reliability to support the district court's finding that Bello had a leadership role in the offense. See United States v. Vaquero, 997 F.2d 78, 84 (5th Cir. 1993).

Bello argues that, in violation of Fed. R. Crim. P. 32, the district court failed to explain why it adopted the view of one co-conspirator over Bello. By expressly considering the objection and adopting the findings in the PSR, the district court fulfilled its obligation under Rule 32. See United States v. Sherbak, 950 F.2d 1095, 1099 (5th Cir. 1992).

The Guidelines provide for a two-point reduction in the

offense level "[i]f the defendant clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct. . . ." U.S.S.G. § 3E1.1(a). Review of a district court's acceptance of responsibility determination is even more deferential than a pure "clearly erroneous" standard. United States v. Watson, 988 F.2d 544, 551 (5th Cir. 1993). The defendant bears the burden to prove entitlement to the reduction. United States v. Lghodaro, 967 F.2d 1028, 1031 (5th Cir. 1992).

A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under § 3E1.1(a). § 3E1.1, comment. (n.1(a)). However, a defendant who falsely denies relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility. Id. A defendant's attempt to minimize or deny involvement in an offense supports the refusal to grant a reduction for acceptance of responsibility. Watson, 988 F.2d at 551. Coyness and lack of candor also demonstrate inadequate acceptance of responsibility. United States v. Brigman, 953 F.2d 906, 909 (5th Cir. 1992), petition for cert. filed, (U.S. Aug. 4, 1992)(No. 92-5417).

In his interview with the probation officer, Bello attempted to minimize his culpability and attempted to shift responsibility to Agide. He stated that he did not know Jackson and acted only

as a driver for Jackson and Agide. He persisted in denying his involvement in the conspiracy at sentencing.

Insofar as Bello argues that the district court's refusal to grant the downward adjustment is related to the Government's failure to move for a § 5K1.1 departure, his argument lacks merit. The sentencing reduction for assistance to authorities shall be considered independently of any reduction for acceptance of responsibility. § 5K1.1, comment. (n.2). Bello has not met his burden of proving that the district court clearly erred by denying Bello an adjustment for acceptance of responsibility. The judgment of the district court is AFFIRMED.