UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2853
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ROBERT GEORGE SPRAGUE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR H 93 0056 6)

(August 22, 1994)

Before GARWOOD, DAVIS, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant, Robert George Sprague, pleaded guilty to conspiracy to reset and alter odometers of used motor vehicles. He was sentenced to twenty-one months imprisonment, two years of supervised release, and $150 in special assessments. He appeals his sentence contending that the district court erred in finding that the scope of the entire conspiracy was foreseeable by him, and in the value of the loss assigned to each vehicle. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

We examine the sentencing court's factual findings only for clear error. See United States v. Morales-Vasquez, 919 F.2d 258, 263 (5th Cir. 1990). In making sentencing decisions, the district court properly considers any relevant evidence, "provided that the information has sufficient indicia of reliability to support its probable accuracy." USSG § 6A1.3(a). If no contrary evidence (as opposed to unsworn allegations) is submitted to rebut the information in the presentence report, the sentencing court is free to adopt that information as its findings. United States v. Mir, 919 F.2d 940, 943 (5th Cir. 1990).

The presentence report outlined a conspiracy run by Travis Barnes to buy high mileage used vehicles, alter the odometers, and resell them from early 1988 through 1991. Appellant worked for Barnes altering odometers and doing body work on the vehicles from April 1988 to October 1988; May 1989 to August 1989; and June 1991 to September 1991. Thus, although Appellant was not continuously employed by Barnes during the entire period of the conspiracy, his periods of employment essentially spanned the duration of the conspiracy.

Further evidence that Sprague was aware of the entire scope of the conspiracy is his plea agreement which provided that his offense level would be determined in part by § 2F1.1 of the Guidelines, and that the amount of the loss would be a significant factor. The agreement also provided that because other individuals were primarily responsible, the entire loss caused by the conspiracy would not be used to determine Sprague's sentence

without some reduction in his offense level. As the district court noted in overruling Sprague's objections to the presentence report, he and the Government agreed that a mitigating role reduction of three offense levels pursuant to § 3B1.2 would account for his role in the offense if the entire loss was used to determine the offense level adjustment. The plea agreement also provided that if the court determined Appellant's role in the offense only by attributing to him the losses related to the vehicles whose odometers he personally actually altered, no § 3B1.2 reduction would be appropriate.

We find no clear error in the sentencing court's determination.

Next Appellant argues that the value of each loss was improperly determined because the average mileage reduction represented only a thirty percent loss in the expected life of a vehicle, rather than the forty percent loss contended for by the Government and accepted by the court. In ruling on Appellant's objection to the presentence report, the district court determined that the report was supported by a preponderance of the reliable credible evidence. The Guidelines referable to this offense refer the sentencing court to the fraud guideline 2F1.1(b)(1). It defines the loss as the difference between the amount paid by the victim and the amount for which the victim could resell the product. The court and the Government reasoned that the vehicles had been driven approximately 85,000 miles which would yield an average remaining life of 65,000 assuming a 150,000 mile life span.

Rolling the odometers back an average of 40,000 miles gave each vehicle an average apparent remaining life of 110,000. The 45,000 miles taken off therefore represented approximately forty-one percent of the 110,000 miles an average consumer would have reasonably thought remained in the useful life of the vehicle. This position is reasonable and is supported by the information available to the sentencing court. There is no clear error.

AFFIRMED.