IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3279
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENZIE WILLIAMS, JR.,
a/k/a Timothy Williams,

Defendant-Appellant.

- - - - - - - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. Cr-92-579-D
- - - - - - - - - - -
October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.
PER CURIAM:*

Kenzie Williams, Jr., argues that the district court misapplied the guidelines in holding him accountable for the 13.1 grams of cocaine base found in his co-defendant's bedroom. Williams argues that there was no evidence to suggest that he could have reasonably foreseen the presence of the drugs in the bedroom.

This Court reviews a district court's factual findings concerning the quantity of drugs involved for clear error and its

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

legal determinations de novo. United States v. Eastland, 989 F.2d 760, 767 (5th Cir.), cert. denied, 1993 WL 292358 (U.S. Oct. 4, 1993) (No. 93-5368).

"The district court is not limited to considering the amount of drugs seized or specified in the charging instrument, . . . but may consider amounts that were part of a common plan or scheme to distribute." United States v. Mitchell, 964 F.2d 454, 458 (5th Cir. 1992) (citations omitted). Relevant conduct includes "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant." U.S.S.G. § 1B1.3(1)(A). If the defendant participates in jointly undertaken criminal activity, he is accountable for "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity." § 1B1.3(1)(B). In order to be "relevant conduct," the conduct of others must be within the scope of the defendant's agreement or reasonably foreseeable in connection with the criminal activity that the defendant has agreed to jointly undertake. Mitchell, 964 F.2d at 458.

Williams acknowledged his participation in the offense of conviction and that he was aware that drug paraphernalia was present in the apartment where he resided. The record reflects that the drug paraphernalia was found in Williams' bedroom as well as in the common areas of the apartment. The presence of additional drugs in the apartment was reasonably foreseeable to Williams. Therefore, the finding of the district court is not clearly erroneous.

Williams argues that the district court misapplied the guidelines in failing to recognize his lesser role in the offense.

A district court should decrease a defendant's offense level by two levels if the defendant is found to be a minor participant in the offense. § 3B1.2(b). "[A] minor participant means any participant who is less culpable than most other participants, but whose role could not be described as minimal." Id. at comment. (n.3). This provision "provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant." § 3B1.2, comment. (backg'd). Less involvement than the other participants standing alone will not warrant minor role status; the defendant must be peripheral to the furtherance of illegal endeavors. United States v. Thomas, 932 F.2d 1085, 1092 (5th Cir. 1991), cert. denied, 112 S.Ct. 887 (1992). "[B]ecause most offenses are committed by participants of roughly equal culpability," this adjustment is intended to be used infrequently. United States v. Windham, 991 F.2d 181, 182 (5th Cir. 1993), petition for cert. filed, (U.S. Aug. 4, 1993) (No. 93-5487) (citation omitted).

Minor participation is a factual determination that will be affirmed unless clearly erroneous. United States v. Franco-Torres, 869 F.2d 797, 801 (5th Cir. 1989). "[A] simple statement that the defendant was not a `minor participant' [will] suffice as a factual finding." United States v. Buenrostro, 868 F.2d 135, 137 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990). The

party seeking the adjustment must prove by a preponderance of the relevant and sufficiently reliable evidence the facts necessary to support the adjustment. United States v. Alfaro, 919 F.2d 962, 965 (5th Cir. 1990).

Williams relies on his self-serving statement that his role in the conspiracy was limited to assisting in the recovery of the package for which he was to receive a $50 fee. Williams argues that this characterization of his role in the scheme is contained in a sworn affidavit filed in the record by the DEA. The affidavit referred to by Williams merely reflects the statement given to the agents by Williams and does not contain any independent corroboration of his limited role in the conspiracy.

"[A] defendant may be a courier without being substantially less culpable than the average participant." Franco-Torres, 869 F.2d at 801. Further, a district judge is not required to accept a defendant's self-serving statement as to his role in the offense. United States v. Badger, 925 F.2d 101, 105 (5th Cir. 1991). The evidence reflected that drug paraphernalia was present in Williams' bedroom and throughout the apartment which indicates that his participation in the drug conspiracy may have been more extensive than he represented. Williams did not present any reliable evidence showing that he was substantially less culpable than Dawson in the commission of the offense. The district court's finding was not clearly erroneous.

AFFIRMED.