UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3595
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM N. FaKOURI,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
(CR-93-47-B-M2)

(January 4, 1994)

Before POLITZ, Chief Judge, JOLLY and DUHÉ, Circuit Judges.

PER CURIAM:[*]

William N. FaKouri appeals the sentence imposed after his conviction on a guilty plea to the making and causing a false statement to be made for the purpose of influencing the Department of Housing and Urban Development in granting mortgage insurance, and aiding and abetting, 18 U.S.C. §§ 1010 and 2. Finding no

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

error, we affirm.

Background

FaKouri operated a business, Nick FaKouri and Associates, which purchased and sold residential real estate. Through the Federal Housing Administration, HUD administered the single-family home mortgage insurance program which insured approved private lenders against loss on qualifying mortgages. Lenders, sellers, and borrowers are required to certify to HUD, through the lending institution, the accuracy of the information submitted to HUD in support of the lender's insurance application.

On November 30, 1989, FaKouri sold a certain property to Queen V. Orange for $25,500. Orange obtained an FHA insured loan from a financial institution to complete the purchase. FaKouri provided Orange $1,500 so she could qualify for the FHA loan. FaKouri caused the $1,500 to be falsely described as a gift from Orange's daughter-in-law in a letter submitted to the financial institution and HUD. These acts were done in violation of 18 U.S.C. §§ 1010 and 2. When mortgage payments were defaulted the financial institution foreclosed, the mortgage note was paid by HUD, and the property was resold at a loss to HUD of $26,245. Prior to November 30, 1989, FaKouri engaged in similar illegal transactions through various employees.

FaKouri pleaded guilty pursuant to a plea agreement which stipulated that under U.S.S.G. § 6B1.4 the loss caused by the offense of conviction was $26,245 and the losses for the purposes

of U.S.S.G. § 1B1.3 was more than $70,000 but less than $120,000. In accordance with the Presentence Investigation Report the court computed the offense level to be 13. The court departed downward one level pursuant to the government's § 5K1.1 motion. The sentencing range for an offense level of 12 is ten to sixteen months. The district court sentenced FaKouri to five months imprisonment, to be served in a community correctional center, and one year supervised release, five months of which are to be served in the same community correctional center, and imposed a $30,000 fine and the statutory assessment.

Analysis

FaKouri raises three points on appeal. First, because he provided substantial assistance the government filed a section 5K1.1 motion, recommending a one-level downward departure which was granted by the district court. FaKouri claims that the district court erred in refusing to depart downward more than one level because the court incorrectly believed that it did not have the discretion to do so. FaKouri supports this contention by pointing to the district court's various statements explaining why it would not grant a greater departure than that recommended by the government. We will not disturb the district court's discretionary decision declining to depart absent a showing that the district court mistakenly believed it was not permitted to do so.[1] Upon review of the record, we find that the district court opted not to

[1] **United States v. Soliman**, 954 F.2d 1012 (5th Cir. 1992).

depart downward more than one level because the facts of the case did not warrant a greater departure. There is no record support for the suggestion that the district court believed it lacked the power to do so.

Secondly, FaKouri claims that the district court refused to depart downward, even though the loss figure used to compute his guideline range significantly overstated the seriousness of his conduct, because the district court erroneously concluded that our decision in **United States v. Robichaux**[2] precluded such a departure. Although the district court referred to **Robichaux** by analogy in explaining its finding that the total loss did not overstate the seriousness of FaKouri's conduct, there is no indication that the court construed **Robichaux** to preclude its exercise of discretion to depart further. We perceive no reversible error.

Finally, FaKouri claims that the two-level increase in his base offense level for his supervisory role under U.S.S.G. § 3B1.1 was improper because no other criminally responsible participants[3] were identified. This argument is foreclosed by our decision in **United States v. Barbontin**[4] where we found that the identities of

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[2]995 F.2d 565 (5th Cir.), cert. denied, 114 S.Ct. 322 (1993).

[3]FaKouri also makes the argument that the government failed to show he supervised any other criminally responsible participant. FaKouri's offense level was increased pursuant to section 3B1.1(c) which does not require the presence of criminally responsible participants as does section 3B1.1(a) or (b). See, e.g., **United States v. Mejia-Orosco**, 867 F.2d 216 (5th Cir.), cert. denied, 492 U.S. 924 (1989) (distinguishing between criminally responsible participants under subsection (a) or (b) and unwitting participants under subsection (c)).

[4]907 F.2d 1494, 1498 (5th Cir. 1990).

other participants in a criminal activity need not be expressly proved for purposes of section 3B1.1. FaKouri maintains that relevant conduct should not be considered in a section 3B1.1 determination. The Introductory Comment to section 3B1.1, however, specifically provides that relevant conduct is to be considered.

AFFIRMED.