

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3806  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GILBERTO I. CRUZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. CR-92-577-E-4  
- - - - -  
(July 22, 1994)

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

PER CURIAM:\*

Gilberto I. Cruz challenges his sentence from his conviction for conspiracy to distribute cocaine and four instances of distribution of cocaine.

Cruz argues that the district court clearly erred in attributing the large quantity of drugs, between fifteen and less than fifty kilograms of cocaine, in setting his base offense level. See U.S.S.G. § 2D1.1(a)(3) & (c)(5). This Court reviews

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the district court's factual finding for clear error. See United States v. Mitchell, 964 F.2d 454, 457 (5th Cir. 1992).

"A factual finding is not clearly erroneous if it is plausible in light of the record read as a whole." United States v. Puig-Infante, 19 F.3d 929, 942 (5th Cir. 1994).

The trial testimony amply supports the district court's determination. See id., at 943. Moreover, the testimony concerning the amount of cocaine supplied by Cruz to various individuals went unrebutted by defense at trial and at sentencing. See United States v. Angulo, 927 F.2d 202, 205 (5th Cir. 1991) (noting that "the defendant bears the burden of demonstrating that the information [submitted to the sentencing judge] cannot be relied upon because it is materially untrue, inaccurate or unreliable").

Cruz argues that the district court erred by failing to make explicit findings on the amount of cocaine reasonably foreseeable to him as part of his relevant conduct in the drug offenses. The base offense level from a drug-trafficking conviction "is determined by the quantity of drugs involved," a quantity made up of "drugs with which the defendant was directly involved, and drugs that can be attributed to the defendant in a conspiracy as part of his `relevant conduct.'" Puig-Infante, 19 F.3d at 942 (referring to relevant conduct under U.S.S.G. § 1B1.3(a)(1)). Because the evidence adduced at trial showed that Cruz was directly involved with these large drug amounts, it was unnecessary for the district court to make explicit findings on

the quantity of drugs attributed to Cruz as part of his relevant conduct.

Cruz argues that the district court erred in adding four levels to his offense level based on Cruz's role in the offenses as a leader or organizer. See U.S.S.G. § 3B1.1(a). Cruz argues that the record lacks reliable information to support the district court's assessment of his role and that the record properly supports the characterization of his role as a supervisor or manager under U.S.S.G. § 3B1.1(b), thus deserving only a three-level adjustment. Cruz failed to present the subsection-b issue to the district court. If Cruz had presented this issue to the district court, this Court would review for clear error. See United States v. Wilder, 15 F.3d 1292, 1299 (5th Cir. 1994).

Under Fed. R. Crim. P. 52(b), this Court may correct forfeited errors only when the appellant shows the following factors: (1) there is an error, (2) that is clear or obvious, and (3) that affects his substantial rights. United States v. Rodriguez, 15 F.3d 408, 415-16 (5th Cir. 1994) (citing United States v. Olano, \_\_\_ U.S. \_\_\_, 113 S.Ct. 1770, 1777-79, 123 L.Ed.2d 508 (1993)). If these factors are established, the decision to correct the forfeited error is within the sound discretion of the Court, and the Court will not exercise that discretion unless the error seriously affects the fairness, integrity or public reputation of judicial proceedings. Olano, 113 S.Ct. at 1778.

The four-point adjustment under § 3B1.1(a) "is proper "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.'" Wilder, 15 F.3d at 1292 (quoting the guideline). The trial testimony amply supports the district court's finding that Cruz was a leader and organizer of the drug-distribution enterprise. See Puig-Infante, 19 F.3d at 944. Because the district court did not clearly err in utilizing the four-level adjustment, there was no error, plain or otherwise, by the court's failure to use the three-point adjustment. See Rodriguez, 15 F.3d at 415.

AFFIRMED.