

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4202
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT LEE SIMPSON, a/k/a Spooky,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
U.S.D.C. No. 1:92CR-116-1

August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Simpson argues that he was entitled to a reduction in his base offense level for acceptance of responsibility. A defendant's offense level is decreased by two levels if "the defendant clearly demonstrates acceptance of responsibility for his offense[.]" U.S.S.G. § 3E1.1(a). If a defendant qualified for a decrease under subsection (a), had an offense level of 16 or greater before the operation of subsection (a), and assisted authorities in the investigation or prosecution of his own

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

misconduct by either timely providing complete information to the government concerning his own involvement in the offense or timely notifying authorities of his intention to enter a plea of guilty, a defendant's offense level is decreased by one additional level. U.S.S.G. § 3E1.1(b).

A defendant bears the burden of proving to the district court that he is entitled to a downward adjustment. United States v. Watson, 988 F.2d 544, 551 (5th Cir. 1993). Review of a district court's acceptance of responsibility determination is even more deferential than a pure clearly erroneous standard. Id.

Although Simpson now claims that he "had sufficient knowledge to make him guilty of the offense," during the interview with the probation officer, Simpson stated that he had no idea that cocaine was in the car. He also stated that he was not following his co-defendant, who was also transporting cocaine, and had no idea where she was going. 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, (Aug. 4, 1992)(No. 92-5417).

Simpson also argues that he should have been granted an additional one-level decrease in offense level because he timely notified authorities of his intention to enter a plea of guilty and cooperated with the Government. A defendant claiming a

reduction in offense level under § 3E1.1(b) for cooperation or a timely guilty plea must first qualify under § 3E1.1(a) by accepting responsibility. Regardless of whether Simpson timely notified the authorities of his intention to enter a plea of guilty, he failed to affirmatively accept personal responsibility. Thus, Simpson is not entitled to an additional one-level decrease in offense level under § 3E1.1(b). The judgment of the district court is AFFIRMED.