

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4922
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SARA LADAY SIMIEN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:91-CR-58(O)
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

The standard for reviewing a district court's acceptance-of-responsibility determination is even more deferential than a pure "clearly erroneous" standard. United States v. Watson, 988 F.2d 544, 551 (5th Cir. 1993), petition for cert. filed, (U.S. Jul. 29, 1993) (No. 93-5407). "This is so because the sentencing judge is in a unique position to evaluate whether the defendant has indeed accepted responsibility." United States v. Shipley, 963 F.2d 56, 58 (5th Cir.) (citation omitted), cert. denied, 113

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

S. Ct. 348 (1992).

Section 3E1.1 of the sentencing guidelines provides a two-level reduction to a defendant who "clearly demonstrates acceptance of responsibility for his offense[.]" U.S.S.G. § 3E1.1(a). The defendant has the burden of proving the entitlement to this downward adjustment. United States v. Lghodaro, 967 F.2d 1028, 1031 (5th Cir. 1992). In applying this section, courts should consider, among other things, whether the defendant truthfully admitted the offense conduct, did not falsely deny any relevant conduct, truthfully admitted relevant conduct, voluntarily surrendered, and timely manifested the acceptance of responsibility. § 3E1.1, comment. (n.1). "The mere entry of a guilty plea, however, does not entitle a defendant to a sentencing reduction for acceptance of responsibility as a matter of right." Shipley, 963 F.2d at 58.

In making its determinations, the sentencing court may rely on evidence that has "sufficient indicia of reliability," such as a presentence report (PSR). United States v. Alfaro, 919 F.2d 962, 966 (5th Cir. 1990). The PSR in this case indicates that the information Simien provided during the presentence interview contradicted information she had provided to case agents during the initial investigation. The PSR also provides that Simien denied knowing that her car contained cocaine. Consequently, the probation officer did not recommend adjusting the offense level for acceptance of responsibility. Simien objected to this finding. The probation officer explained that (1) the guilty plea, alone, did not entitle Simien to this adjustment; (2)

during the presentence interview, Simien denied being aware of the drugs in her car; and (3) she obstructed justice by failing to cooperate with "Pretrial Services" in Dallas after her bond release.

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. In this case, moreover, the offense level was also increased under section 3C1.1 for obstruction of justice. Conduct resulting in an enhancement for obstruction of justice "ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct." § 3E1.1, comment. (n.4).

Because the district court did not clearly err in denying Simien an adjustment for acceptance of responsibility, we AFFIRM.