IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7770
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GASPAR GARCIA,

Defendant-Appellant.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. N-93-CR-90-1

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March 21, 1995

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:[*]

Gaspar Garcia entered a guilty plea to one count of conspiracy to possess with intent to distribute 1000 kilograms or more of marijuana. At sentencing, the district court overruled Garcia's objection to a four-point increase in his offense level for exercising a supervisory role in the conspiracy. Garcia erroneously contends that the district court did not comply with Fed. R. Crim. P. 32(c)(3)(D) in specifically overruling his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

objection. See United States v. Brown, 29 F.3d 953, 957-58 (5th Cir.), cert. denied, 115 S. Ct. 587 (1994).

Garcia asserts that the district court was clearly erroneous in enhancing his offense level for being an organizer or leader of a criminal activity. A defendant's offense level may be enhanced four points if the district court finds him to be a leader or organizer of a criminal activity involving five or more participants. U.S.S.G. § 3B1.1(a). This court will disturb a district court's determination regarding a defendant's role in a criminal activity only if it is clearly erroneous. United States v. Barreto, 871 F.2d 511, 512 (5th Cir. 1989).

Factors to be considered in determining a defendant's role in the offense include the exercise of decision-making authority, the degree of participation in planning or organizing the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, and the degree of control and authority over others. United States v. Watson, 988 F.2d 544, 550 (5th Cir. 1993), cert. denied, 114 S. Ct. 698 (1994); U.S.S.G. § 3B1.1, comment. (n.3).

Linda Hubanks testified at trial that she was the right-hand person for the marijuana organization run by Andrew Jackson Whitmore. Hubanks testified that Garcia provided at least 100 pounds of marijuana to the Whitmore organization each week for three and one-half years beginning in late 1986. Aurelio Garcia, the defendant's brother, testified that the defendant had directed his activities with respect to delivering marijuana. The district court was not clearly erroneous in its findings.

Garcia has also argued that the district court erred because the district court did not specifically identify the five individuals involved in the conspiracy and did not specifically control all five of those participants. There is no need to individually identify the participants if it can be inferred that a sufficient number were involved in the offense. See United States v. Barbontin, 907 F.2d 1494, 1498 (5th Cir. 1990). Also, it is not necessary that Garcia supervised all five participants. He need only have supervised or controlled one participant. See United States v. Okoli, 20 F.3d 615, 616 (5th Cir. 1994).

Finally, Garcia contends that the district court erred in determining his base offense level by using the amount of marijuana that he stipulated to in his plea agreement (2,999 kilograms) to calculate his base offense level rather than the amount that was actually seized by law enforcement officials (1000 kilograms). Garcia did not object to the factual determination on the quantity of marijuana at sentencing. As such, he is prevented from raising such an objection now absent plain error. United States v. McCaskey, 9 F.3d 368, 376 (5th Cir. 1993), cert. denied, 114 S. Ct. 1565 (1994). In United States v. Lopez, 923 F.2d 47, 50 (5th Cir.), cert. denied, 500 U.S. 924 (1991), the court held that "[q]uestions of fact capable of resolution by the district court upon proper objections at sentencing can never constitute plain error." The determination of the amount of drugs attributable to an offense is such a question.

AFFIRMED.