

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8138  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SALEH AHMAD SALMAN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-92-CR-379-1(B)  
- - - - -  
(October 29, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

Saleh Ahmad Salman appeals his guilty-plea conviction and sentence for conspiracy to commit alien smuggling. Salman argues that the district court's determination that he had a managerial role in the conspiracy was clearly erroneous because it was not supported "by a preponderance of the relevant and sufficiently reliable evidence." Salman argues that, at best, the evidence showed that he was only a "middleman" who transported aliens from one point to another.

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 sentence will be upheld so long as it results from a correct application of the guidelines to factual findings that are not clearly erroneous. United States v. Tansley, 986 F.2d 880, 887 (5th Cir. 1993).

Section 3B1.1(b) provides for a three-point increase in the offense level "[i]f the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive." § 3B1.1(b). The guideline commentary indicates that relevant factors in making such a determination include whether the defendant exercised decision-making authority, the nature and degree of his participation in the planning, organization and commission of the offense, the recruitment of accomplices, the nature and scope of the illegal activity, and the degree of control and authority exercised. See § 3B1.1, comment. (n.3).

The sentencing judge must determine factual findings by a "preponderance of the relevant and sufficiently reliable evidence." United States v. Alfaro, 919 F.2d 962, 965 (5th Cir. 1990). If the district court's findings of fact are plausible, based on a review of the entire record, they may not be reversed. Id. at 966.

The district court's finding, based on the PSR, was not clearly erroneous. Regarding the principal scheme to smuggle the seven aliens, the PSR demonstrated that Salman was more than a link in the chain of players. After negotiating the deal, he provided funds to support the scheme and actively monitored its progress by traveling to El Paso and demonstrating an ongoing

concern for the safe arrival of the aliens in Los Angeles. He also recruited his son, Ahmad, who concealed evidence indicating the identity and citizenship of the seven aliens. His role as a supervisor or manager is plausible. The district court's finding was therefore not clearly erroneous. See Alfaro, 919 F.2d at 966.

Nor does Salman cite any case that would require a different result. Salman cites language in United States v. Brown, 944 F.2d 1377 (7th Cir. 1991), that states that distributor status alone does not warrant enhancement under § 3B1.1(c). See id. at 1385. The facts in Brown, however, are factually inapposite and not analogous to the PSR's characterization of Salman's supervisory role in the smuggling scheme. Salman also cites United States v. Sherrod, 964 F.2d 1501 (5th Cir. 1992), cert. denied, 113 S.Ct. 1422 (1993), in which this Court affirmed the district court's denial of a three-level increase pursuant to § 3B1.1(b) because the record did not support a finding that the defendant managed any part of the drug conspiracy at issue. See id. at 1506. Again, the facts in Sherrod are inapposite because, in Salman's case, the record demonstrates his management or supervisory role.

Salman's conviction and sentence is therefore AFFIRMED.