

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8322
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN LEDBETTER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-92-CR-63(12)
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

John Ledbetter contends that the district court erred in refusing to accord him a four or two-level reduction to his offense level, pursuant to U.S.S.G. § 3B1.2(b), for minimal or minor participant status. He maintains that the amount of drugs he was involved with specifically were only a fraction of the total amount of drugs involved in the conspiracy. He also claims that he lacked knowledge and understanding regarding the scope and structure of the enterprise. He further contends that the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court clearly erred in determining that he did not deserve minimal or minor participant status because it considered his involvement with the stash house. His arguments are unavailing. His conviction and sentence are AFFIRMED.

Factual findings underlying the district court's imposition of criminal sentences are reviewed under a clearly erroneous standard. United States v. Mejia-Orosco, 867 F.2d 216, 218 (5th Cir.), cert. denied, 492 U.S. 924 (1989). The district court's refusal to grant a reduction for minimal or minor participant status "is entitled to great deference and should not be disturbed except for clear error." United States v. Devine, 934 F.2d 1325, 1340 (5th Cir.), cert. denied, 112 S.Ct. 349 (1991). As the party seeking a reduction of the sentencing guidelines, Ledbetter must establish, by a preponderance of the evidence, the factual basis warranting the reduction. See United States v. Alfaro, 919 F.2d 962, 965 (5th Cir. 1990).

Section 3B1.2, comment. (n.1) defines a minimal participant as one who demonstrates a "lack of knowledge or understanding of the scope and structure of the [criminal] enterprise." A minimal participant is entitled to a four-level reduction of the offense level. § 3B1.2.

Minor participant status will be accorded when a defendant is substantially less culpable than the average participant. United States v. Lokey, 945 F.2d 825, 840 (5th Cir. 1991). Simply being less involved than other participants will not warrant minor participant status; a defendant must be peripheral to the furtherance of illegal endeavors. United States v. Thomas,

932 F.2d 1085, 1092 (5th Cir. 1991), cert. denied, 112 S.Ct. 887 (1992). A defendant is not entitled to a downward adjustment because others in a conspiracy were possibly more culpable. See United States v. Mueller, 902 F.2d 336, 345-46 (5th Cir. 1990).

Based on the Presentence Investigation Report (PSR), and after considering Ledbetter's attorney's arguments at sentencing, the district court determined that neither minimal nor minor participant status was appropriate. That finding is not clearly erroneous. The facts before the court, reasonably construed, indicate that Ledbetter, on at least eleven occasions, delivered approximately 80 pounds of marijuana from San Antonio, Texas, to Saginaw, Michigan. Additionally, Ledbetter transported \$176,350 in U.S. currency, representing the proceeds from previous marijuana sales, from Michigan to Texas. The PSR recommended no adjustment for Ledbetter's role in the offense. The factual basis for the plea corroborates the PSR.

Additionally, evidence at his sentencing hearing further corroborates the PSR and the factual basis. Case Agent Thomas Wade testified, at sentencing, that Ledbetter informed him that he (Ledbetter) had delivered marijuana on a number of times from Texas to Michigan, and that he was also involved in the distribution of marijuana from the stash houses to some of the customers.

Ledbetter contends that the district court clearly erred when it considered the fact that the electric bill at one of the stash houses was in his name. He refers to a letter offered by his sister, a co-defendant in the case, which stated that she

could not get electricity in her name so she asked him if she could use his name to get the electricity, and that he had no idea what was going on in the house.

However, Agent Wade testified that although he could not say that Ledbetter lived at that particular stash house, he had pictures of him at the residence. One of the pictures shows Ledbetter standing in the house with a shotgun, and another shows him asleep in a chair. Wade further testified that Ledbetter also ran a stash house out of his own residence. The district court did not clearly err in denying Ledbetter a downward adjustment for minimal or minor participant status.

Ledbetter also contends that the district court erred in failing to accord him a credit for acceptance of responsibility. He points to the facts that: 1) the Government considered him to be accurate, reliable, and good witness; 2) he was willing and able to testify for the Government in the future; 3) he exposed himself to considerable physical retaliation; and 4) the district court granted the Government's U.S.S.G. § 5K1.1 motion. The district court denied a reduction for acceptance of responsibility because Ledbetter absconded from the halfway house.

A defendant bears the burden of demonstrating the acceptance of responsibility clearly. U.S.S.G. § 3E1.1(a); see United States v. Fields, 906 F.2d 139, 142 (5th Cir.), cert. denied, 498 U.S. 874 (1990). A defendant is not entitled to the reduction simply because he enters a guilty plea. § 3E1.1, comment. (n.3); see United States v. Shipley, 963 F.2d 56, 58

(5th Cir.), cert. denied, 113 S.Ct. 348 (1992). A determination by a district court whether a defendant has accepted responsibility is entitled to even greater deference than that given under the "clearly erroneous" standard. United States v. Kleinebreil, 966 F.2d 945, 953 (5th Cir. 1992).

The PSR recommended against a reduction for acceptance of responsibility based on Ledbetter's failure to comply with the conditions of his bond. In United States v. Hooten, 942 F.2d 878, 883 (5th Cir. 1991), this Court affirmed the district court's decision not to grant a reduction for acceptance of responsibility based on a defendant's non-compliance with the conditions of his bond.

The Hooten Court reasoned that the commentary to § 3E1.1 "implies that a defendant's failure to comply with the conditions of a bond could be highly relevant to assessing the sincerity of the defendant's contrition." Id. The record indicates that Ledbetter violated his bond conditions by absconding from a halfway house for a period of time in excess of one month, and left the district without permission. Ledbetter does not dispute that assertion. The district court's determination that Ledbetter did not demonstrate an acceptance of responsibility was not clearly erroneous.

AFFIRMED.