

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8784
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

YOUSIF AYESH DAVID,
a/k/a Joe David,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-93-CR-59-1
- - - - -
(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

David argues that the district court should not have upwardly departed from the sentencing guideline for misprision of a felony based on his participation in the underlying offense. This Court has held that "the guideline range for misprision does not contemplate the defendant's personal guilt of the underlying offense." United States v. Pigno, 922 F.2d 1162, 1167 (5th Cir. 1991) (internal quotations and citation omitted); see also United States v. Warters, 885 F.2d 1266, 1275 (5th Cir. 1989). "[T]he

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 may depart from the misprision guideline range if it makes a specific finding that the defendant was guilty of the underlying offense." Pigno, 922 F.2d at 1167 (quotation omitted). The district court must also "expressly determine (and make findings on disputed facts necessary for such determination) the applicable guideline range for the underlying offense, to provide an appropriate benchmark against which to judge the reasonableness of the sentence." Id. (quotation omitted).

The district court found reliable evidence to support the finding that David participated in the underlying offense. The district court also found that the offense level of 12 of the underlying offense of mail fraud and conspiracy would have exposed David to an imprisonment range of 10 to 16 months. Based on the applicable sentencing guidelines, the 12-month term of imprisonment imposed by the district court was a reasonable sentence. Also, the district court did not err in not making a downward departure from the guidelines due to David's cooperation with the Government.

AFFIRMED.