

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8815
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FREDERICK L. NICKLES
a/k/a Fredrick L. Nickles,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-92-CR-104
- - - - -
(July 21, 1994)

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

PER CURIAM:*

Frederick L. Nickles argues that the district court's finding that he sold one-half ounce of cocaine per month for three months is clearly erroneous. The district court's finding regarding the quantity of drugs attributable to the defendant is reviewed under the clearly erroneous standard. United States v. Rogers, 1 F.3d 341, 342 (5th Cir. 1993). The district court may consider any relevant evidence to make the determination as long as the evidence has a sufficient indicia of reliability; 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 has significant discretion in evaluating the reliability of the evidence. United States v. Young, 981 F.2d 180, 185 (5th Cir. 1992), cert. denied, 113 S.Ct. 2454, 2983 (1993). The defendant has the burden of demonstrating that the information the district court relied on in sentencing is materially untrue. Id.

Nickles testified at the sentencing hearing that he admitted to selling one-quarter ounce of cocaine per month for three months. On cross-examination, however, he admitted to selling one-quarter ounce of cocaine twice per month, for a total of one-half ounce per month. The probation officer testified that Nickles was very clear during the presentence interview that he had sold one-quarter ounce on the first and fifteenth of each month and had earned approximately \$400-500 per month through this activity. The district court credited the testimony of the probation officer rather than Nickles's inconsistent testimony. This Court must give due regard to the district court's opportunity to judge the credibility of the witnesses. United States v. McAfee, 8 F.3d 1010, 1018 (5th Cir. 1993). The district court's finding was not clearly erroneous.

AFFIRMED.