

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9104
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

FREDERICK HARRIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4:93 CR 93 K (3))

(May 20, 1994)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Frederick Harris appeals the sentence imposed following a plea of guilty of armed bank robbery in violation of 18 U.S.C. §§ 2 and 2113(d). Finding no error, we affirm.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Harris asserts that, based upon his individual acts and a comparison of those acts to the conduct of his co-defendants, the district court erred by refusing to grant a four-level reduction under U.S.S.G. § 3B1.2(a) for being a minimal participant. Harris concedes that he aided and abetted the other defendants in committing the robbery but contends that because he was some distance away from the bank, acted as the decoy car driver, and never entered the bank or stole the money, his participation was far less than that of his co-defendants. Harris argues that he should have received at least a minor-role reduction of two levels.

Minor role status will be accorded only 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 role 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).

U.S.S.G. § 3B1.2 provides a four-level decrease for a minimal participant and a two-level decrease for a minor participant. United States v. Badger, 925 F.2d 101, 104 (5th Cir. 1991). A minimal participant is one who is "plainly among the least culpable of those involved in the conduct of a group," and "a minor participant is any participant who is less culpable than most other participants but whose role could not be described as minimal." Id. Further, a minimal participant lacks knowledge or understand-

ing of the scope and structure of the enterprise and the activities of others. § 3B1.2(a), comment. (n.1). The district court's determinations under § 3B1.2 are reviewed under the clearly-erroneous standard. United States v. Hewin, 877 F.2d 3, 4-5 (5th Cir. 1989).

A.

Harris objects to the determination that he was not entitled to a minimal participant status because the district court's reasoning that "he was there" is contrary to the stipulated facts. In May, the participants began planning the robbery of the bank to finance Terry Chambers's desire to start a methamphetamine drug lab in Mexico. On at least two occasions, between May 14 and May 21, Harris met with Chambers and Leon Allbright in Linda Day's apartment to plan the robbery of Comerica Bank. The discussion occurred in Day's presence. The parties decided that Harris would wait in a separate vehicle, near the bank, that would be switched with the car driven by Chambers and Allbright if the vehicle were identified.

On May 20, Harris, Chambers, and Allbright stole license plates from a disabled vehicle and attached them to a car borrowed by Harris. Harris drove the borrowed vehicle with the stolen plates to a shopping center parking lot near the bank. Chambers and Allbright entered the bank and took \$26,146 from the tellers. After the robbery, Harris switched cars with Allbright and Chambers and returned the borrowed car to Allbright's cousin. Harris,

Allbright, Chambers, and Teresa Roby loaded a motor home purchased with the stolen money and left town. Harris was later apprehended by FBI agents on July 2, 1993, when he returned to the country from Mexico.

Although Harris did not enter the bank and take the money, the district court did not err in refusing to make an adjustment for "minor participant status," as Harris extensively participated in the planning and execution of the offense. He was aware of the other defendants' roles and how the robbery would be executed. See § 3B1.2, comment. (n.1).

B.

Harris also argues that the district court erred by refusing to grant a two-level decrease under § 3B1.2(b) for being a minor participant. A minor participant is one who is less culpable than most other participants but whose role is not minimal. § 3B1.2, comment. (n.3). A person having a minor role is not merely less involved than the other participants; he must be peripheral to the furtherance of illegal endeavors. See Thomas, 932 F.2d at 1092.

Harris's role, as decoy/lookout, was essential to the execution of this offense. He also helped plan the offense, borrowed a vehicle used during the robbery, and assisted in stealing license plates to conceal the getaway car. Thus, the district court's finding was not in error. See Badger, 925 F.2d at 104-05.

II.

Harris argues that the district court failed to articulate the factual basis for its finding that he is not entitled to an adjustment in his offense level for having a minimal or minor role in the offense. Relying upon United States v. Melton, 930 F.2d 1096, 1099 (5th Cir. 1991), Harris asserts that the court's statements during the sentencing hearing were insufficient.

When asked by Harris's counsel to make a finding on the record regarding the reduction, the district court stated that it would adopt the presentence report (PSR), concluding that Harris's role in the offense did not warrant a downward adjustment. The district court specifically stated the following:

I find that he was not a minimal actor in the case. I think it's just like a poor old guard on a football team and the quarterback, they're all involved, and I feel like he was just as involved as the rest of them. He was there. And my night in jail was because I was there, and my daddy said if you're with them, you're just as liable as they are, son, so just sit up there and spend the night. Thank God it was a long time ago. Anyway, I've been through this.

. . . .

The Court adopts the statements and guideline applications in the presentence report, paragraphs 1 through 67, and the addendum filed on October the 26th, 1993 as the findings of fact.

In United States v. Hardeman, 933 F.2d 278, 283 (5th Cir. 1991), we noted that it is preferable for a court to enunciate its reasons for the denial of a requested reduction, but a district court's sentencing determination is not reversible if the record provides an adequate basis for review. In this case, the PSR described Harris's conduct. Given the stipulated facts of the

factual resume and the court's adoption of the PSR, the district court's ruling adequately explains the court's reasoning and provides a sufficient basis for appellate review.

Melton required the district court to articulate the factual basis for refusing the adjustment, but that case was limited to the "particular offense" involved. 930 F.2d at 1099. Unlike the situation in this case, in Melton the record was inadequate for appellate review, and Melton had requested, but not received, clarification of the judge's finding. Melton, 930 F.2d at 1099. Melton does not mention whether the district court adopted the PSR or whether the PSR contained adequate facts. In the instant case, the PSR contains adequate facts for appellate review, and it was adopted by the district court. In addition, at Harris's request, the court articulated its reason for denying the reduction based upon its finding that Harris was there and just as liable for the robbery as were his codefendants.

AFFIRMED.