

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10093  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WARREN CLARK,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:93-CR-76-Y(2)

- - - - -  
(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Warren Clark first argues that he should not have received a two-level enhancement for obstruction of justice pursuant to U.S.S.G. § 3C1.1. Because Clark did not object in the district court to the obstruction-of-justice enhancement, this issue is reviewed only for plain error. United States v. Rodriguez, 15 F.3d 408, 415-16 (5th Cir. 1994).

Under Fed. R. Crim. P. 52(b), this Court may correct forfeited errors only when the appellant shows the following factors: (1) there is an error, (2) that is clear or obvious, and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(3) that affects his substantial rights. Id. (citing United States v. Olano, \_\_\_ U.S., \_\_\_ 113 S. Ct. 1770, 1777-79, 123 L. Ed. 2d 508 (1993)). If these factors are established, the decision to correct the forfeited error is within the sound discretion of the Court, and the Court will not exercise that discretion unless the error seriously affects the fairness, integrity or public reputation of judicial proceedings. Olano, 113 S. Ct. at 1778.

The guidelines explicitly list escaping from custody before sentencing and wilfully failing to appear for a judicial proceeding as examples of conduct to which this enhancement applies. § 3C1.1, comment (n.3(e)). Thus, the district court did not commit error, plain or otherwise, in imposing a two-level enhancement under this provision.

Clark also contends that he was entitled to a two-point reduction in his base offense level for acceptance of responsibility because he admitted his crime and expressed sincere remorse and contrition. "The trial court's determination of acceptance of responsibility is entitled to great deference on review and will not be disturbed unless it is without foundation." United States v. Lara, 975 F.2d 1120, 1129 (5th Cir. 1992). Moreover, § 3E1.1, comment. (n.4), provides that a defendant who receives an enhancement for obstruction of justice will ordinarily not receive a decrease for acceptance of responsibility.

Although Clark stated that he accepted responsibility for his criminal conduct, he failed to appear for sentencing,

remained a fugitive for approximately six weeks, and was in possession of a handgun when he was arrested. Since this conduct is inconsistent with acceptance of responsibility, the district court's denial of a decrease under § 3E1.1 was not without foundation.

AFFIRMED.