

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10143
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROGER WATTS,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CR-279-R(34)

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(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

"Specific factual findings about the quantity of drugs to be used in setting the base offense level are reviewed on appeal only for clear error." United States v. Angulo, 927 F.2d 202, 205 (5th Cir. 1991). The district court may consider any evidence that has "sufficient indicia of reliability," including hearsay. U.S.S.G. § 6A1.3(a), comment.; United States v. Manthei, 913 F.2d 1130, 1138 (5th Cir. 1990). The presentence report (PSR) itself also bears such indicia. United States v. Alfaro, 919 F.2d 962, 966 (5th Cir. 1990).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The PSR and testimony at the sentencing hearing demonstrate that Roger Watts received two kilograms of cocaine while a member of the conspiracy. The district court did not clearly err in calculating two kilos of cocaine as attributable to Watts.

Section 3B1.1(c) authorizes an enhancement to a defendant's offense level if the defendant "was an organizer, leader, manager, or supervisor in any criminal activity" Factors for consideration include the exercise of decision-making authority, the degree of participation in planning or organizing the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, and the degree of control and authority over others. United States v. Watson, 988 F.2d 544, 550 (5th Cir. 1993), cert. denied, 114 S. Ct. 698 (1994); U.S.S.G. § 3B1.1, comment (n.3).

This Court will not disturb a district court's findings with regard to a defendant's role in a criminal activity unless those findings are clearly erroneous. Id. A finding is not clearly erroneous so long as it is plausible in light of the record read as a whole. United States v. Adams, 996 F.2d 75, 78 (5th Cir. 1993).

Testimony from Watts's sentencing hearing established that cocaine was delivered to Watts's business, made into crack cocaine, and distributed by his distribution network. The PSR supported this fact. The district court's two-level enhancement was not clear error.

Watts argues that the district court erred in denying him a reduction for acceptance of responsibility because he swiftly

pleaded guilty and accepted responsibility for one kilo of cocaine, which was the only amount that was reasonably attributable to him.

This Court applies a very deferential standard of review to a district court's refusal to credit a defendant's acceptance of responsibility. See United States v. Thomas, 12 F.3d 1350, 1372 (5th Cir.) (applying "clearly erroneous" standard and noting, that there "appear[ed] to be no practical difference" between that standard and the "without foundation" or "great deference" standards used in other cases) (internal quotations and citations omitted), cert. denied, 114 S. Ct. 1861, 2119 (1994).

The sentencing judge is in a unique position to evaluate whether a defendant has accepted responsibility. United States v. Brigman, 953 F.2d 906, 909 (5th Cir.), cert. denied, 113 S. Ct. 49 (1992). The defendant bears the burden of proving that he is entitled to the downward adjustment, United States v. Kinder, 946 F.2d 362, 367 (5th Cir. 1991), cert. denied, 112 S. Ct. 1677, 2290 (1992), and is not entitled to a reduction simply because he has entered a guilty plea. U.S.S.G. § 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 defendant cannot deny part of his relevant criminal conduct and receive a reduction for acceptance of responsibility as to the conduct that he has admitted. United States v. Smith, 13 F.3d 860, 866 (5th Cir.), cert. denied, 114 S. Ct. 2151 (1994); see United States v. Kleinebreil, 966 F.2d 945, 953-54 (5th Cir. 1992).

At sentencing, Watts admitted to receiving two kilograms of cocaine, yet falsely informed law enforcement officials that only one kilo of cocaine was delivered to him. The district court did not err in determining that Watts was not entitled to a reduction for acceptance of responsibility.

AFFIRMED.