

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10177  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OLABODE OLUGBOYEGA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 93-CR-98-T

- - - - -  
(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:\*

Olugboyega challenges the district court's factual findings in its reliance on the PSR in sentencing. This Court will uphold the district court's sentence so long as it results from a correct application of the guidelines to factual findings that are not clearly erroneous. United States v. Alfaro, 919 F.2d 962, 964-66 (5th Cir. 1990). Using this standard, this Court must consider whether the district court's findings that Olugboyega's criminal activity involved 38 vehicles and a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

\$420,202.14 loss are plausible in light of the record as a whole. See id. at 966.

A defendant's relevant conduct for purposes of determining the offense level includes "all reasonably foreseeable acts and omissions of others in furtherance of jointly undertaken criminal activity," whether the conduct occurred during the commission of the offense of conviction, in preparation for the offense, or during an attempt to avoid detection or responsibility for the offense. U.S.S.G. § 1B1.3(a)(1)(B). A district court may properly consider in its sentencing decisions any relevant evidence that "has sufficient indicia of reliability to support its probable accuracy." § 6A1.3(a). The court must resolve specifically disputed factual issues if it intends to use the PSR facts as a basis for its sentence. See Fed. R. Crim. P. 32(c)(3)(D). Rule 32(c)(3)(D) is satisfied if the district court rejects the defendant's objections and specifically adopts the relevant portions of the PSR, as it did in this case. See United States v. Mora, 994 F.2d 1129, 1141 (5th Cir.), cert. denied, 114 S. Ct. 417 (1993).

As the party seeking an adjustment in the sentence level, Olugboyega had the burden of proving by a preponderance of the evidence the facts necessary to support the adjustment. See United States v. Patterson, 962 F.2d 409, 415 (5th Cir. 1992). Objections which are merely in the form of unsworn assertions do not bear sufficient indicia of reliability to be considered. Id. When a defendant challenges facts stated in the PSR without presenting rebuttal evidence, the district court has the

discretion to adopt the PSR without further inquiry if there is an adequate evidentiary basis for the PSR's factual conclusions. United States v. Rogers, 1 F.3d 341, 345 (5th Cir. 1993).

To the extent that Olugboyega's objections to the PSR and at the sentencing hearing reflect unsworn assertions, this Court may not consider them as evidence in review of the findings of the district court. Alfaro, 919 F.2d at 967. Trial testimony from a co-conspirator, Calvin Hamilton, revealed that Olugboyega was involved in the theft of 50-100 vehicles and established adequate evidentiary basis for the PSR's factual conclusions. The district court did not clearly err in basing Olugboyega's offense on the theft of 38 vehicles at an aggregate loss value of \$420,202.14.

AFFIRMED.