

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10474  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARY ACOSTA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:93-CR-042-A

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(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:\*

On January 28, 1994, Acosta pleaded guilty to Count 1 of an indictment charging her with conspiracy to defraud the IRS in violation of 18 U.S.C. § 286. Acosta admitted that "108 tax returns were filed as a result of this scheme claiming refunds totaling \$237,999.44." After applying U.S.S.G. § 2F1.1 to calculate a sentence based upon the amount of the loss, the district court sentenced Acosta to 19 months in prison and three years supervised release, and ordered her to pay \$2,000 restitution. Acosta failed to object to either the presentence

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

investigation report's recommended sentence or the court's attributing the full amount of the loss to her at sentencing. Acosta argues for the first time in this appeal that she could have reasonably foreseen only \$4,439 of the total loss, and that accordingly her total offense level would be 7, and that her guideline imprisonment range would be 0 to 6 months. Arguing that the district court committed plain error in attributing the entire loss to her, Acosta asks that this Court remand the case to the district court for resentencing.

This Court need not review the district court's sentence for even plain error. There is no error. In her guilty plea, Acosta admitted to participating in the conspiracy and that in furtherance of the conspiracy 108 false returns were filed resulting in a loss to the United States in excess of \$237,000. To state now simply that she was unaware of the vast majority of the activity for which she was convicted does not evidence error.

Acosta's argument on appeal is disingenuous. Her appeal is without arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because this appeal is frivolous, it is dismissed. 5th Cir. R. 42.2.

DISMISSED.