

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10602
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS OLIVARES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-155-T-3
- - - - -

(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

In this direct criminal appeal, Jesus Olivares first contends that the district court's determination of the quantity of cocaine attributable to him is based on "rank speculation."

This court reviews a district court's factual findings concerning the quantity of drugs attributable to a defendant for clear error. United States v. Maseratti, 1 F.3d 330, 340 (5th Cir. 1993), cert. denied, 114 S. Ct. 1096 (1994). The court may consider any relevant evidence that "has sufficient indicia of reliability to support its probable accuracy" in arriving at the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

quantity of drugs reasonably foreseeable to the defendant. United States v. Puig-Infante, 19 F.3d 929, 942 (5th Cir.), cert. denied, 115 S. Ct. 180 (1994); U.S.S.G. § 6A1.3(a), p.s. Because the PSR is reliable, it may be considered as evidence. United States v. Lghodaro, 967 F.2d 1028, 1030 (5th Cir. 1992).

Olivares offered no evidence at the sentencing hearing to dispute the accuracy of either the information in the presentence report (PSR) or the testimony of a Drug Enforcement Administration (DEA) Task Force Officer regarding Olivares's major role in the conspiracy. See Lghodaro, 967 F.2d at 1030 (objections in the form of unsworn assertions do not bear sufficient indicia of reliability to be considered). Thus, the record supports the district court's finding that Olivares could reasonably foresee the entire amount of cocaine trafficked by the conspiracy.

Olivares also contends that the evidence was insufficient to support the district court's finding that he was a manager or supervisor in the conspiracy.

Section 3B1.1(b) of the Sentencing Guidelines provides for a three-point increase in the offense level "[i]f the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive[.]" The district court's determination that Olivares was a supervisor is a finding of fact reviewed for clear error. See United States v. Pierce, 893 F.2d 669, 676 (5th Cir. 1990).

The PSR stated that Olivares was a manager or supervisor of the drug organization who "had several persons who worked specifically for him." In addition, the DEA officer testified at the sentencing hearing that Olivares was a major distributor who worked directly under organization leader Jose Castorena. Olivares submitted no rebuttal evidence challenging these underlying facts. He challenged only the PSR's ultimate factual conclusion that he was a supervisor. Consequently, the district court was able to rely upon the PSR without further inquiry. See United States v. Mir, 919 F.2d 940, 943 (5th Cir. 1990). The court's finding that Olivares was a manager or supervisor was thus not clearly erroneous.

Olivares has also filed a motion requesting a rehearing on his motion for appointment of substituted counsel. The motion is DENIED.

The sentence is AFFIRMED.