UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10690
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ANTHONY GEORGE ALLEN, a/k/a "T",

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:92-CR-365-D)

July 31, 1995

Before DAVIS, BARKSDALE, and DEMOSS, Circuit Judges.

PER CURIAM:[1]

Anthony Allen appeals from his conviction (pursuant to a guilty plea) and sentence for conspiracy to possess with intent to distribute cocaine base. We **AFFIRM**.

I.

Allen pleaded guilty in a written plea agreement to conspiracy to possess cocaine base with intent to distribute, in violation of

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[1] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

21 U.S.C. § 846. The district court accepted the plea in July 1993.

The Presentence Investigation Report (PSR) calculated Allen's offense level at 48: a base offense level of 42, U.S.S.G. § 2D1.1(c), increased by two levels for possession of a dangerous weapon, § 2D1.1(b)(1), and by four levels for Allen's role in the offense, § 3B1.1(a). Allen objected to the role in the offense increase, the rejection of a two-level reduction for acceptance of responsibility, and to the total offense level of 48. At an extensive sentencing hearing in July 1994, the district court again accepted Allen's plea, overruled his objections, and sentenced him to life imprisonment.

II.

A.

Allen contends that the district court violated U.S.S.G. §§ 6B1.1(c) and 6B1.4 by accepting the plea agreement prior to completion of the PSR. Allen complains that he was not apprised of the significance of his past relevant conduct on his potential sentence, and, therefore, his plea was involuntary.[2]

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[2] Allen also claims that this same conduct constitutes a breach of the plea agreement in that he was sentenced in a manner for which he had not bargained. We disagree. It is not error for the district court to base a sentence on conduct or quantities of drugs apart from that charged in the indictment and stipulated by the parties at the time of the guilty plea. ***United States v. Woods***, 907 F.2d 1540, 1542 (5th Cir. 1990), *cert. denied*, 498 U.S. 1070 (1991). Furthermore, as noted *infra*, Allen understood and accepted that his maximum potential sentence was life imprisonment, and that no one could predict his sentencing range until after completion of the PSR.

Allen made no objection to these alleged deficiencies in the district court; we review only for plain error. ***United States v, Calverley***, 37 F.3d 160, 162-64 (5th Cir. 1994), *cert. denied*, 115 S. Ct. 1266 (1995). Allen must demonstrate "plain" error which "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings". ***United States v. Olano***, 113 S. Ct. 1770, 1779 (1993). Allen makes no such showing. The plea agreement made clear, and Allen stated his understanding, that he faced a potential life sentence without parole. He understood further that he would not receive preferential treatment at sentencing, and that his sentence would be determined by the Sentencing Guidelines.

B.

Allen challenges the district court's refusal to grant an acceptance of responsibility reduction pursuant to U.S.S.G. § 3E1.1. We will affirm the district court's factual determination unless it is without foundation. ***United States v. Maldonado***, 42 F.3d 906, 913 (1994).

As is more than well established, a guilty plea, without more, does not entitle a defendant to a reduction for acceptance of responsibility. *E.g.,* ***United States v. Wilder***, 15 F.3d 1292, 1298 (5th Cir. 1994). Moreover, an attempt to minimize involvement in an offense supports denial of the reduction. ***United States v. Watson***, 988 F.2d 544, 551 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 698 (1994). The district court found that Allen had not truthfully admitted his full involvement in the offense. Testimony from an investigating officer that Allen's statements were "completely

inconsistent" with other evidence from the investigation provides the requisite foundation for that finding.

C.

Allen contends next that the court erred in assessing a four-level increase to his sentencing level, pursuant to U.S.S.G. § 3B1.1(a), for his role as an organizer of the conspiracy. We review the court's factual finding only for clear error. ***United States v. Barreto***, 871 F.2d 511, 512 (5th Cir. 1989).

An investigating officer testified at the sentencing hearing that Allen was the "principal manager and organizer of this conspiracy", and gave specific testimony regarding Allen's role in the conspiracy, including identification of numerous individuals who acted under Allen's authority. The district court credited this testimony, and rejected Allen's contention that he was a member of only one of multiple, smaller, unrelated conspiracies. Our review of the record and the relevant case law supports the district court's finding. *See* ***Id.***; § 3B1.1, comment. n.3 (listing factors to consider in evaluating defendant's leadership status).

D.

Finally, Allen maintains that the district court erred in calculating his offense level at 48, urging that the Guidelines do not contemplate an offense level exceeding 43. We need not address this issue. At a level of 43, Allen would still receive a life sentence. This issue is moot.[3]

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[3] We note, however, that a recent unpublished decision by our court, ***United States v. Wood***, No. 94-10217 (5th Cir. Feb. 8, 1995), appears to foreclose Allen's argument.

III.

For the foregoing reasons, the judgement is

AFFIRMED.