

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10765
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM LEWIS FREEMAN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:94-CR-23-A

- - - - -
(January 25, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

William Lewis Freeman pleaded guilty to one count of opening and maintaining a place for the manufacturing of marijuana. The district court overruled Freeman's objections to the denial of downward adjustments for acceptance of responsibility and a mitigating role in the offense, and Freeman challenges these findings on appeal.

The defendant bears the burden of demonstrating that he is entitled to a downward adjustment for acceptance of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

responsibility under U.S.S.G. § 3E1.1, and this Court reviews the sentencing court's determination with even more deference than the pure clearly erroneous standard. United States v. Bermea, 30 F.3d 1539, 1577 (5th Cir. 1994); § 3E1.1, comment. (n.5). Although a defendant is not required "to volunteer, or affirmatively admit relevant conduct beyond the offense of conviction," a defendant who "falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility." § 3E1.1, comment. (n.1(a)); see United States v. Smith, 13 F.3d 860, 866 (5th Cir.), cert. denied, 114 S. Ct. 2151 (1994).

Freeman admitted his involvement and participation in the growing of the marijuana, but maintained that he believed the marijuana was being grown for the personal use of those involved and was not being harvested for distribution. Drug Enforcement Administration agent DeLaFlor stated that based on his experience, the quantity of marijuana involved was inconsistent with personal use. Because Freeman "falsely denied" his involvement in the relevant conduct which the district court found to be true, he has not demonstrated that the district court's finding regarding acceptance of responsibility was clearly erroneous.

This Court reviews the sentencing court's determination that a defendant did not play a minor or minimal role in the offense for clear error. United States v. Zuniga, 18 F.3d 1254, 1261 (5th Cir.), cert. denied, 115 S. Ct. 214 (1994). The defendant

bears the burden of proving his mitigating role by a preponderance of the evidence. Id.

A minimal participant is one who is "plainly among the least culpable of those involved in the conduct of the group" and who demonstrates a "lack of knowledge or understanding of the scope and structure of the enterprise." § 3B1.2, comment. (n.1); United States v. Mitchell, 31 F.3d 271, 278 (5th Cir.), cert. denied, 115 S.Ct. 455, 649 (1994), 1994 WL 675619 (1995); Zuniga, 18 F.3d at 1260 n.10. A minor participant is defined as "any participant who is less culpable than most other participants, but whose role could not be described as minimal." § 3B1.2, comment. (n.3); Zuniga, 18 F.3d at 1260 n.10. The adjustment under § 3B1.2 is intended for those participants who are "substantially less culpable than the average participant." § 3B1.2, comment., (backg'd). Because most offenses are committed by participants of equal culpability, this adjustment will be used infrequently. United States v. Maseratti, 1 F.3d 330 341 (5th Cir. 1993), cert. denied, 114 S. Ct. 1096, 1552, 115 S. Ct. 282 (1994).

DeLaFlor testified that Freeman's role in the offense was general caretaking functions such as turning on the lights and watering the plants. Freeman understood the scope and structure of the marijuana enterprise and understood that he would share in the proceeds from the enterprise. The district court's finding that Freeman was not "substantially less culpable" than the average participant was not clearly erroneous.

AFFIRMED.