

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10981
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANDY LYNN CARPENTER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CR-205-1
- - - - -

June 29, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Mandy Lynn Carpenter was indicted on two counts of stealing from a federally insured financial institution. Carpenter pleaded guilty to the second count of the indictment in exchange for dismissal of the first.

Carpenter argues that the district court was clearly erroneous in enhancing her base offense level two levels because the offense involved more than minimal planning. See United States v. Barndt, 913 F.2d 201, 204 (5th Cir. 1990). 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

guidelines define minimal planning as "more planning than is typical for commission of the offense in a simple form." U.S.S.G. § 1B1.1 comment. (n. 1(f)). The district court found that the two bank robberies were not "simply crimes of opportunity." The district court found that Carpenter had recruited her two accomplices in order to rob the banks. Carpenter did not simply walk into a convenient bank and hold it up. She twice gained the confidence of her manicure clients and then enlisted them in assisting her to rob the banks. It was not clearly erroneous to find that this was more than the minimal planning required for a typical bank robbery.

Carpenter argues that the district court was clearly erroneous in increasing her offense level because of her role in the offense. See United States v. Ronning, 47 F.3d 710, 711 (5th Cir. 1995). Section 3B1.1(c) of the guidelines provides for a two-point increase in the offense level "[i]f the defendant was an organizer, leader, manager, or supervisor in any criminal activity" that involved fewer than five participants and was not otherwise extensive. Factors to be considered are "the exercise of decision-making authority, the nature of the participation in the offense, the right to a share of the fruits of the crime, the degree of participation in the planning stages and the degree of control and authority over others." United States v. Alvarado, 898 F.2d 987, 993 (5th Cir. 1990).

The district court may consider any information which has "sufficient indicia of reliability." U.S.S.G. § 6A1.3 comment. "[A] presentence report generally bears sufficient indicia of

reliability to be considered as evidence by the trial judge in making the factual determinations required by the guidelines."

United States v. Elwood, 999 F.2d 814, 817 (5th Cir. 1993)

(internal quotation and footnote citation omitted). The burden is on the defendant to demonstrate that the information contained in the PSR is materially untrue. United States v. Shipley, 963 F.2d 56, 59 (5th Cir.), cert. denied, 113 S. Ct. 348 (1992).

Although there was a factual dispute as to how the money was divided between Carpenter and Labermier, Carpenter has not argued that other information contained in the PSR was materially unreliable. The PSR showed that both bank robberies were carried out in an identical manner. It is not clearly erroneous to find that the individual common to both crimes, Carpenter, exercised the decision-making authority in the offense of conviction.

Carpenter argues that it is improper to enhance a sentence both for more than minimal planning and for being an organizer of the crime. In United States v. Godfrey, 25 F.3d 263, 264 (5th Cir.), cert. denied, 115 S. Ct. 429 (1994), this court held that "because neither section 3B1.1 nor section 2F1.1 forbid double-counting with each other, increases under both of those sections are permitted."

AFFIRMED.