

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11156
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TIMOTHY ALLEN MCBROWN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:89-CR-159-A
- - - - -

June 27, 1995

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

PER CURIAM:*

The district court's acceptance-of-responsibility determination is a factual finding reviewed for clear error. United States v. Watkins, 911 F.2d 983, 984 (5th Cir. 1990). The district court is entitled to great deference in determining whether a defendant deserves the reduction for acceptance of responsibility contemplated by the sentencing guidelines. U.S.S.G. § 3E1.1, comment. (n.5); see Watkins, 911 F.2d at 985. A guilty plea does not, of itself, warrant a reduction for

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

acceptance of responsibility. United States v. Paden, 908 F.2d 1229, 1237 (5th Cir. 1990), cert. denied, 498 U.S. 1039 (1991). The defendant bears the burden of proving that he is entitled to the downward adjustment. United States v. Kinder, 946 F.2d 362, 367 (5th Cir. 1991), cert. denied, 503 U.S. 907 (1992).

McBrown received a two-point upward adjustment in his offense level for obstruction of justice under § 3C1.1 for attempting to bribe deputy U.S. Marshals to allow him to escape. A defendant who receives the enhancement for obstruction of justice qualifies for a reduction based on acceptance of responsibility only in extraordinary circumstances. § 3E1.1, comment. (n.4). The guideline addressing acceptance of responsibility specifically states that "[c]onduct resulting in an enhancement under § 3C1.1 . . . ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct." Id. The interaction of these two guidelines provisions in such a manner is specifically contemplated by the guidelines. See id.

Given the district court's finding that McBrown had obstructed justice, as well as the deferential standard of review applied to acceptance-of-responsibility findings, the district court did not clearly err in determining that McBrown was not entitled to a reduction in his offense level for acceptance of responsibility. See United States v. Ayala, 47 F.3d 688, 691 (5th Cir. 1995). The district court's decision is AFFIRMED.