IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20244
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERTO NOFERINI,

Defendant-Appellant.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-93-202-1

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(January 25, 1995)

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

PER CURIAM:[*]

Roberto Noferini argues that the district court erred in its calculation of the offense level because it added 13 levels for the amount of the loss and two levels for impersonation of an officer.

The Government contends that Noferini's argument respecting the amount of the loss should be reviewed for plain error only. Because Noferini did not raise in the district court the influence of Al-Harbi's testimony on the determination of the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

loss amount, this Court reviews the issue for plain error. United States v. Rodriguez, 15 F.3d at 408, 414-17 (5th Cir. 1994). Under Fed. R. Crim. P. 52(b), this Court may correct forfeited errors only when the appellant shows the following factors: (1) there is an error, (2) that is clear or obvious, and (3) that affects his substantial rights. Rodriguez, 15 F.3d at 415-16 (5th Cir. 1994) (citing United States v. Olano, ___ U.S.___, 113 S. Ct. 1770, 1777-79, 123 L. Ed. 2d 508 (1993)). If these factors are established, the decision to correct the forfeited error is within the sound discretion of the Court, and the Court will not exercise that discretion unless the error seriously affects the fairness, integrity or public reputation of judicial proceedings. Olano, 113 S. Ct. at 1778; see also United States v. Calverley, 37 F.3d 160, 162 (5th Cir. 1994) (en banc).

The district court determined, without objection from Noferini, that the wire-fraud counts, the impersonation count, and the money-laundering counts should be grouped under U.S.S.G. §§ 3D1.2(b) and (c). Section 3D1.3(a) then required the district court to apply the highest offense level of the individual counts to the group. Under § 2F1.1, the district court determined that the offense level for the wire-fraud counts should be 23. Sections 2S1.1(a)(1) and 2X2.1 prescribe a base offense level of 23, before an adjustment is made for the amount of the loss, if the defendant was convicted of aiding and abetting money laundering under 18 U.S.C. § 1956(a)(1)(A). Noferini was convicted of such an offense. Accordingly, even if the district court's reliance on the Presentence Report for the

loss amount was error and Noferini's total offense level, using the wire-fraud counts, should have been less than 23, the highest offense level for the grouped counts would still have been at least 23 because the offense level for the money-laundering counts would apply. The resulting guideline range would have been at least as burdensome as the one which the district court used and, accordingly, Noferini has not demonstrated that his substantial rights are affected, or that this Court's refusal to consider the issue "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." Olano, 113 S. Ct. at 1779 (internal quotation and citation omitted).

To the extent that Noferini is raising on appeal any arguments previously argued to the district court respecting its calculation of the loss, any error that might have been committed by the district court is harmless. See United States v. Tello, 9 F.3d. 1119, 1128 (5th Cir. 1994).

Noferini also contends that the district court improperly "double counted" in adjusting his offense level upward by two levels under § 2F1.1(b)(3) for Noferini's misrepresentations that he was acting on behalf of a government agency because he was also convicted of the impersonation count. Any error in the use of the impersonation adjustment is harmless because it was used as a component of the offense level for the wire-fraud counts, and as discussed above, calculation of the offense level using the money-laundering counts would have resulted in a higher offense level. See Tello, 9 F.3d at 1128.

AFFIRMED.