

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-20276  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODNEY STEPHEN WASHINGTON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CR H 93-0091-11  
- - - - -

(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Rodney Stephen Washington contends that the district court erred in increasing his base offense level due to the possession of firearms by co-conspirators.

Washington has not shouldered his burden of demonstrating that the information contained in the PSR is materially untrue. See United States v. Rodriguez, 897 F.2d 1324, 1328 (5th Cir.), cert. denied, 498 U.S. 857 (1990). Given 1) the scope of the conspiracy and Washington's role in it, 2) this court's acknowledgement that firearms are "tools of the [narcotics]

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

trade,"\*\* and 3) Washington's failure to present any evidence rebutting the PSR, the district court's determination that he should have reasonably foreseen that some co-conspirators might have possessed dangerous weapons is not clearly erroneous.

Washington's argument that he had "arguably" withdrawn from the conspiracy prior to the seizure of the weapons was not raised before the district court. 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. United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc) (citing United States v. Olano, 113 S. Ct. 1770, 1776-79 (1993)), petition for cert. filed (U.S. Jan. 18, 1995) (No. 94-7792). 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. Washington has not shown error.

AFFIRMED.

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\*\* United States v. Aguilera-Zapata, 901 F.2d 1209, 1215 (5th Cir. 1990).