UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-20717
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant.

VERSUS

DAVID HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR H 93 0238 8)

August 4, 1995

Before DAVIS, BARKSDALE and DEMOSS, Circuit Judges.

PER CURIAM:[1]

Hernandez challenges his sentence following his guilty plea. We affirm.

I.

David Hernandez pleaded guilty to aiding and abetting money-laundering and to conspiracy to money-launder. He was sentenced to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

serve concurrent terms of 84 and 60 months in prison and three years supervised release.

In 1990, the United States Customs Service (USCS) began an undercover sting operation by placing a confidential informant (CI) in a storefront business, Servicio General. Servicio General assisted persons involved in drug-smuggling and money-laundering with changing currency denominations and with wiring money.

The first transaction in issue occurred in the parking lot outside Hernandez' office building on July 2, 1991. The Presentence Investigation Report (PSR) provides that "the CI received a call from [a co-conspirator] who requested that the CI drive a vehicle to the office of David Hernandez, 6655 Hillcroft, where he would exchange his vehicle for another vehicle containing money." The vehicle contained $317,327 which was subsequently wired to Colombia.

On July 5, 1991, Hernandez met in his office with the CI and Diego Arce, the organizer of the conspiracy. Together, they cut out a newspaper article reporting the Government's seizure of drugs and money and faxed it to Colombia.

On July 11, 1991, Arce phoned the CI and told him that he had $350,000 to be picked up the next day. On July 12, a co-conspirator arrived at the CI's house and told the CI that Arce and Hernandez had the money at Hernandez's office. The CI went to the office, where Hernandez gave him a suitcase containing $358,228. Part of this money was delivered to Florida and the remainder was wire transferred to Columbia.

Using both money-laundering transactions, the PSR attributed a total of $675,555 in laundered money to Hernandez. Hernandez objected to this figure and argued that he had no connection to the July 2, 1991 transfer. The district court found that "these exchanges of money and cars at [Hernandez'] office property and the parking lot associated with it [were] reasonably foreseeable acts of others in furtherance of jointly undertak[en] criminal activity" and overruled Hernandez' objection. The court imposed a four-level increase in offense level for laundering funds in excess of $600,000, U.S.S.G. § 2S1.1(b)(1), granted a reduction for acceptance of responsibility and arrived at a total offense level of 27.

In this appeal, Hernandez contends that the court erred by including the funds from the July 2 transfer in the calculation of his offense level and by accepting his guilty plea without an adequate factual basis.

II.

A.

Hernandez argues first that the district court erred in its finding that the $317,000 delivery was reasonably foreseeable to him. This factual finding is not clearly erroneous as long as it is plausible in light of the record read as a whole. United States v. Sanders, 942 F.2d 894, 897 (5th Cir. 1991).

A number undisputed points in the PSR are relevant to this issue. First, when the CI received the call on July 2, he was told to drive his vehicle "to the office of David Hernandez." We agree

with the district court that it is significant that the CI was not simply given the address of the building but rather referred specifically to David Hernandez. Three days later on July 5, Hernandez participated in a meeting with Arce and the CI at his own office and helped to fax news articles to Colombia about recent law enforcement seizures of funds. Then, on July 12, Hernandez actively participated in transferring money in his office. We note that the amount of the July 2 transfer was roughly the same as the July 12 transfer. Additionally, on July 23, Hernandez traveled to Colombia to pick up his commissions for his money laundering activities.

Moreover, while Hernandez objected to the inclusion of the July 2 funds, he offered no evidence showing that he was uninvolved with conspiracy at that time or that he could not reasonably foresee such a transfer. Without opposing evidence, the district court does not err by adopting the findings in the PSR without further inquiry. United States v. Mir, 919 F.2d 940, 943 (5th Cir. 1990). For these reasons, we conclude that the district court did not err by finding that the July 2 transfer was reasonably foreseeable to Hernandez.

B.

Hernandez argues next that the district court erred in accepting his guilty plea without an adequate factual basis. Specifically, Hernandez claims that there is no evidence that he associated with and participated in the criminal venture. This argument is raised for the first time on appeal and review is

limited to plain error. United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc), cert. denied, 115 S.Ct. 1266 (1995). At the rearraignment hearing, the court developed the factual basis for Hernandez' plea by having the prosecutor recite the facts that would have been proved at trial and by questioning Hernandez himself. The court brought out the following undisputed facts: on July 12, 1991, Hernandez brought a suitcase containing $358,000 to his office, where he met Arce and the CI. Hernandez gave the money to the CI knowing that the purpose of the transfer was to wire the money to Colombia. Hernandez admitted that he "agreed" to assist Arce by delivering the money in his office. This recitation was adequate to demonstrate that Hernandez associated with the money laundering scheme and engaged in affirmative conduct designed to aid its success. Hernandez has demonstrated no Rule 11(f) error, much less plain error.

AFFIRMED.