

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40011
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS VINCENT GOO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:93-CR-115-1
- - - - -
(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Thomas Vincent Goo contends that there was insufficient evidence of premeditation to justify a sentence based on U.S.S.G. § 2A2.1(a)(1), attempted first-degree murder.

Factual findings regarding sentencing factors are reviewed under the "clearly erroneous" standard. United States v. Franco-Torres, 869 F.2d 797, 800 (5th Cir. 1989).

Goo's base offense level was properly calculated under § 2A2.1(a)(1) as 28. Premeditation is normally associated with a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

murder in cold blood and requires an indefinite period in which the accused deliberates before acting. United States v. Shaw, 701 F.2d 367, 395 and n.24 (5th Cir. 1983), cert. denied, 465 U.S. 1067 (1984). "Any interval of time between the forming of a specific intent to kill and the execution of that intent, which is of sufficient duration for the accused to be fully conscious and mindful of what he intended willfully to set about to do, is sufficient to justify a finding of premeditation." Id.

In ruling on the premeditation issue, the district court concluded:

THE COURT: Okay. The court finds from the other undisputed facts in the Presentence Report that in this case, in the court's opinion, this was premeditated murder. Mr. Goo made the arrangement to buy the pistol in Honolulu, he then flew to San Francisco and subsequently arrived in Port Arthur, Texas, with the pistol in hand, loaded, walking into his ex-wife's place of employment. He made statements to the off-duty officer who was providing security at the place of employment that he wished to kill his wife.

Based upon the recent purchase of the pistol, the fact that it was loaded, his statements at the scene and the arrest indicate to the court that Mr. Goo had thought out his plan to kill his wife and then perhaps kill himself, and apparently even kill any other employees who got in his way at the time. Therefore, Objection No. 1 is overruled.

This determination is verified by the facts in the presentence report. Goo admitted to the arresting officer that he wanted to kill his wife and had intended to shoot all five rounds at her to ensure her death. During the interview with his probation officer, Goo did not contest the police officer's description of his offense conduct. At the arraignment proceeding, Goo

conceded to the facts read into the record that described that he had intended to murder his wife. Thus, Goo's conduct justified a sentence based on the underlying offense of attempted first-degree murder. The district court's determination of a sentence based on § 2A2.1(a)(1) was not "clearly erroneous." Franco-Torres, 869 F.2d at 800.

AFFIRMED.