

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40017
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS VASQUEZ MORENO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:93-CR-14-1
- - - - -

(January 24, 1995)

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

PER CURIAM:*

In order to obtain a two-level reduction of the offense level for acceptance of responsibility, a defendant must "clearly demonstrate[] acceptance of responsibility for his offense." U.S.S.G. § 3E1.1(a); see United States v. Lghodaro, 967 F.2d 1028, 1031 (5th Cir. 1992). A defendant who falsely denies or frivolously contests relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility. § 3E1.1 comment. n.1(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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Although Moreno questions the reliability of the probation officer's report of his interview, we have held that the Pre-Sentence Report generally bears sufficient indicia of reliability to be considered as evidence by the trial judge in making factual determinations required by the Sentencing Guidelines. United States v. Alfaro, 919 F.2d 962, 966 (5th Cir. 1990). The accounts provided by the confidential informant, Moreno's co-defendants, and tape recorded conversations indicate that Moreno planned and executed the distribution of the marihuana, including the hiring of personnel and the acquisition of the camper and the 18-wheeler. Given the great deference afforded the sentencing judge, the judge's finding that Moreno falsely denied relevant conduct and, thus, that he was not entitled to the two-level reduction for acceptance of responsibility was neither unfounded nor clearly erroneous. See United States v. Cartwright, 6 F.3d 294, 304 (5th Cir. 1993) (citations omitted), cert. denied, 115 S. Ct. 671 (1994).

Because Moreno must first qualify for the two-level reduction, he is not entitled to the additional one-level reduction for acceptance of responsibility. U.S.S.G. § 3E1.1(b); United States v. Tello, 9 F.3d 1119, 1124 (5th Cir. 1993).

The appeal is DISMISSED as frivolous. See Fifth Cir. R. 42.2.