

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40811

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
BENSON WATTA WANAMBISI,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(93-CR-30045)

(July 18, 1995)

Before JOLLY and BENAVIDES, Circuit Judges, and DUPLANTIER*,
District Judge.

PER CURIAM:**

Wanambisi was convicted by a jury of conspiracy to import heroin. He now appeals his conviction and sentence. The district court determined that the base offense level was 36 because Wanambisi was involved in more than 10 and less than 30 kilograms of heroin. U.S.S.G. § 2D1.1(c)(4). When defense counsel asked the court "to state where [it] [found] the

* District Judge of the Eastern District of Louisiana, sitting by designation.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

quantities," the court specifically relied on the two kilograms involved in the count of conviction and "the 18 kilos." The "18 kilos" apparently included 12 kilograms that DEA Agent John Nattinger testified was smuggled into this country by Sally Trahan. At the sentencing hearing, Wanambisi objected to these 12 kilograms, asserting that the presentence report did not notify him of any such evidence. The PSR provided that "Trahan stated she returned from various locations in the Far East with undetermined amounts of heroin." (emphasis added).

We find this was insufficient notice to the defendant that the court would rely on that quantity of drugs to determine his sentence. Further, although it is not crystal clear, it appears from the record that the court sustained Wanambisi's objection to the 3 kilograms smuggled by Nick Montesantos and, thus, did not consider it in the base offense level computation. Excluding the kilograms of which Wanambisi had insufficient notice and the 3 kilograms apparently excluded from consideration by the district court, only 9 kilograms remain.¹ Nine kilograms would not give Wanambisi a base offense level of 36. Because the district court apparently relied upon evidence of an amount of heroin of which Wanambisi had insufficient notice, the cause must be remanded to the district court for a hearing to clarify the drug quantity and to give the defendant adequate notice of the information that the

¹ The 9 kilograms consist of the following: the 2 kilograms of heroin involved in the count of conviction, the 6 kilograms brought into the country for Wanambisi by Sally Trahan, and approximately 1 kilogram brought in June 1991 by Pedro Buentello for Wanambisi.

court might rely upon to determine the sentence. Wanambisi will be allowed to challenge any such evidence, and the court shall make specific findings as to the quantity of heroin used to calculate the base offense level.

With respect to Wanambisi's remaining claims, we have considered briefs and oral arguments of counsel and the pertinent parts of the record and conclude that such claims are without merit and that there is no error requiring reversal.

Accordingly, the conviction is AFFIRMED, and the sentence is VACATED and REMANDED for further proceedings.