

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50276
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE ALFREDO RAMOS-DEL BOSQUE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. DR-94-CR-13-3

- - - - -
(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Jose Alfredon Ramos-Del Bosque challenges the district court's refusal to find that he was a minimal or minor participant and to reduce his base offense level pursuant to U.S.S.G. § 3B1.2. Whether Bosque was entitled to this reduction is reviewed under the clearly erroneous standard. United States v. Buenrostra, 868 F.2d 135, 138 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990).

Section 3B1.2 offers a reduction of two to four levels in the base offense level for minimal and minor participants. 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"minimal participant" is one who demonstrates a "lack of knowledge or understanding of the scope and structure of the enterprise." § 3B1.2, comment. (n.1). A "minor participant" is similarly defined as one who is "less culpable than most other participants, but whose role could not be described as minimal." Id. (n.3). This Court has noted that because most offenses are committed by participants of roughly equal culpability, "it is intended that [the adjustment] will be used infrequently." United States v. Nevarez-Arreola, 885 F.2d 243, 245 (5th Cir. 1989).

The district court was not required to grant Bosque a reduction on the basis that he was less culpable than his codefendants. The commentary to § 3B1.2 makes clear that a downward adjustment under its provisions is generally appropriate only where the defendant was "substantially less culpable than the average participant." § 3B1.2, comment. (backg'd); United States v. Gadison, 8 F.3d 186, 197 (5th Cir. 1993). Bosque bears the burden of proving his minor role in the offense. United States v. Brown, 7 F.3d 1155, 1160 n.2 (5th Cir. 1993).

The fact that the PSR contains no evidence regarding the other participants' roles, or details regarding his participation, does not render Bosque's conduct substantially less culpable than the other participants' conduct. This Court has held that a one-time courier of marijuana who performed the task after meeting previously unknown individuals in a bar was not entitled to a § 3B1.2 reduction. See Buenrostra, 868 F.2d at 137-38. Moreover, the lack of a prior criminal history is not a

factor in determining whether a reduction is warranted under § 3B1.2. Bosque has not proved that he was substantially less culpable than anyone. The district court's refusal to reduce Bosque's offense level for minimal or minor participation was not clearly erroneous.

The judgment of the district court is AFFIRMED.