

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50571
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES NUNN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. 91-CR-38-17
- - - - -
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Appellant Charles Nunn challenges the district court's finding on remand that he possessed the firearm during the conspiracy. We review the district court's factual findings for clear error and give due deference to a sentencing court's application of the sentencing guidelines to the facts. United States v. Aquilera-Zapata, 901 F.2d 1209, 1216 (5th Cir. 1990).

Section 2D1.1(b)(1) directs the sentencing court to increase by two levels the base offense level of a defendant convicted of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

certain drug-related offenses (including conspiracy to possess with intent to distribute MDMA) if "a dangerous weapon (including a firearm) was possessed." It should be applied "if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense." U.S.S.G. § 2D1.1, comment. (n.3). The district court may rely on information contained in the Pre-Sentence Report (PSR) when making a sentencing determination, even if based on information provided by codefendants, as long as the information bears the minimum indicia of reliability. United States v. Shipley, 963 F.2d 56, 59 (5th Cir.), cert. denied, 113 S. Ct. 348 (1992). A defendant is responsible for proving that the information on which the district court relies is materially untrue. Id.

Nunn offered no evidence to rebut the information contained in the PSR. His unsworn assertions do not bear a sufficient indicia of reliability to be considered. United States v. Lghodaro, 967 F.2d 1028, 1030 (5th Cir. 1992). When no relevant affidavits or other evidence are submitted to rebut the information contained in the PSR, the court is free to adopt the findings without further inquiry or explanation. United States v. Mir, 919 F.2d 940, 943 (5th Cir. 1990).

The pistol was found in the same drawer as the drugs. Nunn had possessed the pistol since 1988 when he was involved in the conspiracy. It is not clearly improbable that the pistol was connected with the drug trafficking conspiracy. The judgment of the district court is AFFIRMED.