

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50692  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN RAMIRO TENORIO ESQUIVEL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-93-CR-110  
- - - - -

June 30, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Juan Ramiro Tenorio Esquivel argues that the district court's finding with regard to the number of guns involved in the offense was clearly erroneous. He contends that the information upon which the district court based its finding lacked sufficient indicia of reliability. This court reviews the application of the sentencing guidelines de novo and the district court's findings of fact for clear error. United States v. Hill, 42 F.3d 914, 916 (5th Cir. 1995).

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

The district court may rely upon information contained in the PSR when making a sentencing determination 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 upon which the district court relies is materially untrue. Id. A defendant's 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). If 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 district court stated its specific reason for departing upward, relying upon the information contained in the PSR and the testimony of Special Agent Rayburn. Esquivel has not met his burden of proving that the information upon which the district court relied is materially untrue. See Shipley, 963 F.2d at 59. Because no evidence was presented to rebut the information contained in the PSR and the testimony of Agent Rayburn, the district court was free to accept it. See Mir, 919 F.2d at 943. The district court's finding that Esquivel's offense conduct involved at least 600 firearms was thus not clearly erroneous.

AFFIRMED.