

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60373
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES E. BYERS,
a/k/a "Scobey",

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 3:93-CR-92-S-D
- - - - -

(January 27, 1995)

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

PER CURIAM:*

The district court's finding regarding the quantity of drugs attributable to a defendant is a factual finding reviewed for clear error. United States v. Rogers, 1 F.3d 341, 342 (5th Cir. 1993). The undisputed amount of crack cocaine that the undercover agent purchased in the two transactions on May 21, 1992, was 23 rocks weighing 2.1 grams.

The district court found that Byers had initiated the drug transaction by offering to sell the \$400 worth of crack and that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

he and his partner had jointly accomplished the sale. The district court's finding was not clearly erroneous. See U.S.S.G. § 1B1.3(a)(1)(A) and (B).

Byers bears the burden of proving that his role in the offense was minor or minimal. See United States v. Brown, 7 F.3d 1155, 1160 n.2 (5th Cir. 1993). The district court's decision whether to reduce Byers' sentence pursuant to § 3B1.2 is a factual finding reviewed for clear error. See United States v. Buenrostro, 868 F.2d 135, 138 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990).

The district court determined that it could not conclude that Byers was less culpable than his partner because Byers had "put in motion the whole transaction by asking them what they needed" The court's refusal to reduce Byers' offense level for minimal or minor participation was not clearly erroneous. Byers' sentence is therefore AFFIRMED.