

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 94-60556

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

SONYA CANADA, and RONNIE NAKIA JAMERSON,

Defendants-Appellants.

Appeal from the United States District Court
For the Northern District of Mississippi

(CR 4 93 134 6 & 5)

March 27, 1995

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM*

The evidence revealed that Canada and Jamerson had been

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

participants in a crack cocaine distribution organization that had suppliers in Los Angeles and dealers in Greenwood, Mississippi. Jamerson and two co-conspirators relocated from Los Angeles to Mississippi in August 1992 to help establish the distribution organization there. The organization began receiving at least nine ounces of crack cocaine per week in September 1992. Jamerson lived in Greenwood in August and September 1992. While she lived in Mississippi, she held drugs for members of the organization until they were sold. After September, Jamerson was not involved with the organization again until December 1992, when she received a money order in Los Angeles sent by sellers in Mississippi.

Sonya Canada entered the conspiracy in September 1992 and remained a member until its demise in January 1993. Canada mailed many of the nine-ounce packages of crack cocaine from Los Angeles to distributors in Mississippi. She also received a significant number of the money orders that were sent from Mississippi to Los Angeles. The money orders reflected the organization's profits. Between September 1992 and January 1993 a total of \$207,003 was transferred from the organization's sellers in Mississippi to various co-conspirators in Los Angeles. The probation office used this monetary amount to determine the total drug quantity involved in the offense. Because members of the organization were selling the crack for \$1,000 an ounce in Mississippi, the probation office divided the dollar value of the money orders received by members in Los Angeles each month by 1,000 to determine the number of ounces of crack cocaine sold per month.

Each defendant filed objections to the PSR. The district court overruled their objections and sentenced Jamerson to 120 months imprisonment and five years supervised release, and Canada to 292 months imprisonment and five years supervised release. Each timely noticed her appeal of her sentence.

JAMERSON'S CONTENTION

Fact-Finding Regarding the \$6,000 Money Order:

Jamerson contends that the district court erred in determining her relevant conduct by attributing to her an amount of drugs in excess of that for which she was responsible. The PSR indicated that Jamerson was involved in the conspiracy in August, September, and December 1992. In assessing Jamerson's relevant conduct, the PSR included the total amount of drugs sold by her co-conspirators in Greenwood for each of the three months. Jamerson argues that she should not have been considered a member of the conspiracy in December 1992 because the Government did not put on any evidence at trial showing that she had received a \$6,000 money order, but rather argues that, because the evidence of the money order was not introduced at trial, the court erred in using the transfer to conclude that Jamerson had reentered the conspiracy in December 1992. She argues that "the only evidence submitted to the court as to the \$6,000.00 money order and Jamerson's re-entry into the conspiracy was a statement in the presentence report giving the presentence officer's report of hearsay evidence." The "hearsay" to which Jamerson alludes is the fact that the PSR's inclusion of the \$6,000 money order as relevant conduct is based on the probation officer's interview with the DEA agent who investigated the offense. Jamerson contends that the PSR's inclusion of the December money order is based on unsworn assertions that make the information unreliable.

This Court reviews a sentence imposed under the guidelines to determine if it was imposed in violation of law or as a result of an incorrect application of the guidelines. 18 U.S.C. § 3742(e); United States v. Follin, 979 F.2d 369, 375 (5th Cir. 1992), cert. denied, 113 S. Ct. 3004 (1993). Factual findings relevant to the application of the guidelines are reviewed for clear error. Follin, 979 F.2d at 375. A factual finding is not clearly erroneous if it is "plausible in light of the record read as a

whole." Id. (internal quotation and citation omitted).

"A district court's findings about the quantity of drugs implicated by the crime are factual findings reviewed under the 'clearly erroneous' standard." United States v. Rivera, 898 F.2d 442, 445 (5th Cir. 1990). In ruling on Jamerson's objection prior to sentencing, the district court stated:

But the Probation Service finds, and I think they're correct, that this defendant received \$6,000 in money wire transfers on December 3, 1992, sent by Michael Jones, who was identified, who has been identified, as being Michael Walls, one of the participants in this conspiracy....

The probation officer in effect found that the defendant reentered the drug conspiracy in December of 1992 by receiving the \$6,000 in money wire transfers on December 3.

In resolving disputed factual matters at sentencing, the district court may consider any relevant evidence with sufficient indicia of reliability. United States v. Manthei, 913 F.2d 1130, 1138 (5th Cir. 1990). A PSR generally has that type of reliability. United States v. Alfaro, 919 F.2d 962, 966 (5th Cir. 1990). The defendant has the burden of proving that the evidence objected to is unreliable or untrue. United States v. Kinder, 946 F.2d 362, 366 (5th Cir. 1991), cert. denied, 112 S. Ct. 2290 (1992). If no relevant affidavits or other evidence are submitted to rebut the information contained in the PSR, the district court is free to adopt its findings without further inquiry or explanation. United States v. Mir, 919 F.2d 940, 943 (5th Cir. 1990). Jamerson did not provide any evidence to rebut the information in the PSR. She has failed to establish that the court erred in relying on the information contained in the PSR.

The Equal Protection Claim:

Jamerson also contends that 21 U.S.C. § 841 violates the Equal Protection Clause of the Fifth Amendment because it mandates punishment one hundred times greater for the possessor of crack cocaine than for the possessor of powder cocaine, and thus has a disparate impact on blacks. This Court has previously rejected a similar claim and specifically held that § 841 does not violate the Equal Protection Clause. United States v. Watson, 953 F.2d 895, 897-98 (5th Cir.), cert. denied, 112 S. Ct. 1989 (1992). Because "it is the firm rule of this circuit that one panel may not overrule the decisions of another," United States v. Taylor, 933 F.2d 307, 313 (5th Cir.), cert. denied, 112 S. Ct. 235 (1991), Jamerson's argument is without merit.

CANADA'S CONTENTION

Relevant Conduct:

Sonya Canada contends that the district court erred in determining her relevant conduct by attributing to her an amount of drugs in excess of that for which she was responsible. She argues that the PSR should have used only the wire transfers that she personally received in calculating total attributable drug quantity for purposes of assessing her relevant conduct. Canada contends that she received only \$48,850 in wire transfers connected with the drug distribution conspiracy. The PSR indicates that a total of \$207,003 was transferred from Mississippi to co-conspirators in Los Angeles during the months in which Canada was involved in the operation. She essentially contends that she was not aware of, and

could not have reasonably foreseen, any of the other money transfers or drug-related transactions beyond those in which she was directly involved. A defendant involved in a conspiracy is accountable for drug quantities with which she is directly involved and drugs that can be attributed to her as relevant conduct. United States v. Carreon, 11 F.3d 1225, 1230 (5th Cir. 1994). "Relevant conduct for conspiratorial activity is defined...as 'all reasonably foreseeable acts and omissions of others in furtherance of jointly undertaken criminal activity.'" Id. (quoting U.S.S.G. § 1B1.3(a)(1)(B)).

In response to her objection to the recommendation, the probation officer stated that:

based on all testimony and evidence presented at trial, as well as information obtained via interviews with [DEA] Agent Arliss Swindoll, this defendant was involved to such a nature and extent that the total amount of cocaine distributed during and in the course of the period in which she was involved in said conspiracy was reasonably foreseeable to this defendant....

The district court adopted the factual findings contained in the PSR, R. 2, 77, and noted Canada's long association with the co-conspirators and with one of the leaders in particular. The court concluded that Canada was very familiar with the operations of the organization and that she was quite involved in the conspiracy:

So I'm of the opinion that Probation has correctly held her accountable for her foreseeable conduct, the foreseeable consequences of her conduct. As a member of conspiracy, she's responsible, along with the others, for all of the unlawful acts of the conspiracy....

If no relevant affidavits or other evidence are submitted to rebut the information contained in the PSR, the district court is

free to adopt its findings without further inquiry or explanation. Mir, 919 F.2d at 943. Canada did not provide any evidence to rebut the information in the PSR. Her allegations that she could not have reasonably foreseen the activities that resulted in the \$207,003 in wire transfers are insufficient to establish clear error.

Eighth Amendment Claim:

Canada also contends that her sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment. She argues that she was placed in a "higher sentencing category than justified by the evidence presented and those activities reasonably foreseeable to a co-conspirator in her situation." The essence of Canada's argument is that because the district court included in its determination of relevant conduct amounts of drugs that she could not have reasonably foreseen, her sentence violates the Eighth Amendment. Canada's argument is foreclosed by the fact that the district court properly determined that Canada should have reasonably foreseen the quantity of drugs attributed to her.

For the foregoing reasons, both Jamerson's and Canada's sentences are AFFIRMED.