

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-30789
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES E. SMITH,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 99-CR-17-ALL
- - - - -
December 14, 1999

Before JOLLY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

James E. Smith appeals his guilty-plea conviction and sentence for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). He argues that the district court erred by not granting him a downward adjustment for acceptance of responsibility.

The district court's determination regarding acceptance of responsibility will be upheld unless it is without foundation. See United States v. Anderson, 174 F.3d 515, 525 (5th Cir. 1999). The district court credited testimony at the sentencing hearing

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

that Smith intentionally possessed the gun and deliberately shot Hokim Emile. Smith maintained that he found the gun on the ground and it accidentally discharged. Considering the highly deferential standard of review and the district court's unique ability to observe the witnesses and weigh their credibility regarding the conflicting accounts of the events at issue, the evidence was sufficient to support the district court's denial of the adjustment for acceptance of responsibility. See U.S.S.G. § 3E1.1, comment. (n.1(a)); United States v. Spires, 79 F.3d 464, 467 (5th Cir. 1996); United States v. Kinder, 946 F.2d 362, 367 (5th Cir. 1991). Therefore, the judgment of the district court is AFFIRMED.

AFFIRMED.