UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8357
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

SHERRI L. WALLINGFORD,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(W-92-CR-35(1))

(March 4, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Sherri L. Wallingford appeals her sentence and the denial of her motion to continue sentencing. We **AFFIRM.**

I.

Wallingford pleaded guilty to use of a telephone to facilitate the commission of a felony offense (distribution of a controlled substance), and tax evasion, in violation of 21 U.S.C. § 843(b) and 26 U.S.C. § 7201, respectively. On the day of her sentencing, she

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* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

moved to substitute retained counsel for court-appointed counsel, and for a continuance to allow her retained counsel time to review and file objections to the pre-sentence report (PSR). The court granted the motion to substitute counsel, but denied the continuance. It did, however, allow her appointed counsel to participate as co-counsel at sentencing; and he took an active role. Wallingford was sentenced to, *inter alia*, concurrent 16-month imprisonment terms for each count.

II.

A.

Wallingford contends that the district court improperly increased by two her offense level for the tax evasion count, under U.S.S.G. § 2T1.1(b)(1), and that, therefore, her total offense level should have been 12, rather than 14. Because she did not raise this issue in the district court, we review only for plain error. *See* ***United States v. Brunson***, 915 F.2d 942, 944 (5th Cir. 1990).

The offense level for the telephone count was calculated at 12; that for the tax evasion count at 10 (eight plus the two-level adjustment noted above). Because Wallingford was convicted of two counts that were not closely related under U.S.S.G. § 3D1.2, the greater of the two offense levels -- 12 for the telephone count -- was used in calculating her total offense level, with two levels added, pursuant to U.S.S.G. § 3D1.4, resulting in a total offense level of 14. (Wallingford was later granted a two-level acceptance of responsibility reduction.) Thus, the offense level for the tax

evasion count was disregarded in the total offense level calculation, and any error made in its calculation was harmless. In sum, there was no plain error.

B.

Wallingford next contends that the district court erred in denying her motion to continue the sentencing, and that, therefore, her retained counsel had insufficient time to review the PSR and file objections. (Her retained counsel did, however, participate fully at sentencing. Among other things, he took testimony from Wallingford and presented argument.) In order to prevail on this issue, she must show that the district court abused its discretion and that she suffered prejudice as a result. ***United States v. Peden***, 891 F.2d 514, 519 (5th Cir. 1989). As discussed above, her belated challenge to the calculation of her sentence, raised by her substituted/retained counsel, lacks merit. And, this is the only new objection made by that lawyer. In short, Wallingford was not prejudiced by the denial of the continuance. Accordingly, this contention, too, lacks merit.

III.

For the foregoing reasons, the judgment is

AFFIRMED.