

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5514  
Summary Calendar

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DEAN ARTHUR HOOVER,

Petitioner,

versus

U. S. PAROLE COMMISSION,

Respondent.

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Appeal from the Determination of the  
United States Parole Commission

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(June 17, 1994)

Before POLITZ, Chief Judge, JONES and EMILIO M. GARZA, Circuit Judges.

POLITZ, Chief Judge:\*

Dean Arthur Hoover appeals a decision by the United States Parole Commission based on its refusal to grant his request for a minor role adjustment to his base offense level. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

### Background

Hoover was arrested in Tequila, Jalisco, Mexico on November 2, 1991 based on an anonymous tip that Hoover and his companion, Richard Lee Jackson, were transporting marihuana in a silver motor home. Mexican authorities found four marihuana cigarettes on Hoover's person, a small bag of marihuana in a cereal box, and 56 packages of marihuana weighing a total of 113 kilograms under a false floor. After their arrest Hoover and Jackson told the authorities that they had obtained the marihuana from Francisco Chavez and planned to sell it in the United States. The three were to split the proceeds. Hoover and Jackson later retracted their statements, denying any knowledge of the drugs.

Hoover and Jackson were convicted by a Mexican court for transportation of marihuana and sentenced to ten years imprisonment. Hoover was fined 6,440 pesos; Jackson was fined 11,000 pesos. Pursuant to the Treaty on the Execution of Penal Sentences,<sup>1</sup> Hoover was transferred to the United States on July 16, 1993 to serve out the remainder of his sentence. The following August a postsentence report was completed and a parole commission hearing was held to determine Hoover's release date under 18 U.S.C. § 4106A(b)(1)(A). The hearing examiners recommended a base offense level of 26<sup>2</sup> and a criminal history category of I for a

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<sup>1</sup>Treaty on Execution of Penal Sentences, Nov. 25, 1976, U.S. -- Mex., 28 U.S.T. 7399, T.I.A.S. No. 8718.

<sup>2</sup>The base offense level was determined by looking at the domestic offense most analogous to the crime committed in Mexico, possession with intent to distribute marihuana, 21 U.S.C. § 841(a)(1). The applicable guideline is § 2D1.1(a)(3).

corresponding guideline range of 63-78 months imprisonment. They also suggested a six-month departure for physical abuse and torture and a fifteen-percent reduction for good behavior. The examiners recommended against Hoover's request for a two-point reduction in offense level, finding that Hoover had not played a minor role in the offense. The Regional Parole Commission adopted the examiners' recommendations and set a release date after 48 months of incarceration followed by a supervised release period of three years.<sup>3</sup> Hoover timely appealed.

#### Analysis

Hoover argues on appeal that he played a minor role in transporting the marihuana and is therefore entitled to a two-point reduction of his offense level. We review the parole commission construction of the Sentencing Guidelines de novo and its factual determinations for clear error.<sup>4</sup> Thus considered, we conclude that the parole commission did not clearly err in determining that Hoover was not a minor participant.

Section 3B1.2(b) of the Sentencing Guidelines allows a two-level decrease in the offense level if the defendant was a minor participant.<sup>5</sup> The application notes to that section define a minor

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<sup>3</sup>Although Hoover initially challenged the length of his supervised release period, a later modification by the parole commission rendered that objection moot.

<sup>4</sup>**Molano-Garza v. U.S. Parole Com'n**, 965 F.2d 20 (5th Cir. 1992), cert. denied, 113 S.Ct. 1009 (1993).

<sup>5</sup>U.S.S.G. § 3B1.2(b).

participant as a "participant who is less culpable than most other participants, but whose role could not be described as minimal." A minimal participant is one "who [is] plainly among the least culpable of those involved in the conduct of a group."

Arguing for minor participation status, Hoover contends that he was only a passenger in the truck, that his friend Jackson was the driver, that Jackson paid his expenses, and that he knew nothing about the hidden marihuana. Hoover also points to Jackson's higher fine as evidence that Jackson was the more culpable. Considering similar arguments, the commission could not reconcile Hoover's earlier admission that the men planned to transport and sell the marihuana and to split the proceeds. Noting that Hoover knew the owner of the motor home, flew to Mexico to pick it up, and was arrested while in a restaurant and while the motor home was parked, the commission found "no credible factual information besides [Hoover's] statement . . . to corroborate his claim of a minor role."<sup>6</sup>

On the facts as presented, the commission did not clearly err. In determining participant status the parole commission is not required to accept the defendant's version of the crime.<sup>7</sup> Rather,

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<sup>6</sup> Hoover argues in brief that the commission erroneously required corroborative evidence as a prerequisite to accepting his testimony as credible and reliable. Such is not the case. The commission did consider Hoover's testimony, it simply did not consider it in a vacuum. Considering all of the facts surrounding the crime, the commission simply did not believe that Hoover played a minor role in the offense. We will not disturb this credibility assessment.

<sup>7</sup> **United States v. Fields**, 906 F.2d 139, 142 (5th Cir.), cert. denied, 498 U.S. 874 (1990).

in ascertaining whether the defendant has proved<sup>8</sup> his minor role in the offense -- a fact-intensive inquiry -- the commission must consider the entire circumstances of the crime.<sup>9</sup> Evaluating the facts and circumstances of Hoover's case, the parole commission found that Hoover failed to demonstrate a minor role. We perceive no error in this finding and therefore AFFIRM the decision of the parole commission.

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<sup>8</sup> See **United States v. Zuniga**, 18 F.3d 1254 (5th Cir. 1994) (defendant bears burden of proving minor role in offense).

<sup>9</sup> **Molano-Garza; United States v. Melton**, 930 F.2d 1096 (5th Cir. 1991).