

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30326
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CLAUDE ANTANNE GRIFFIN, SR.,

Defendant-Appellant.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 93-CR-491 "N" (04)

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(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

A district court's findings on the quantity of drugs on which a sentence should be based are factual findings which are reviewed for clear error. United States v. Rivera, 898 F.2d 442, 445 (5th Cir. 1990). A fact finding is not clearly erroneous if it is plausible in light of the record as a whole. United States v. Sanders, 942 F.2d 894, 897 (5th Cir. 1991).

When an offense involves negotiation to traffic in a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

applicable amount, except the court shall exclude any amount it finds that the defendant did not intend to produce and was not reasonably capable of producing. U.S.S.G. § 2D1.1, comment. (n. 12). A defendant who participates in a drug conspiracy is accountable for the quantity of drugs attributable to the conspiracy and reasonably foreseeable to him. § 1B1.3(a)(1)(B).

The drug conspiracy involved at least 500 kilograms of cocaine, Griffin acted as a primary organizer and planner to have that amount transported into the United States, and Griffin was capable of producing the negotiated amount of drugs. Griffin did not present evidence that he was incapable of delivering 500 kilograms. Additionally, Griffin entered a factual basis in the PSR attesting these facts and pleaded guilty to the indictment which specified the negotiated quantity as 500 kilograms. The district court did not err in basing Griffin's offense level on the negotiated amount of cocaine.

Age and physical condition are ordinarily irrelevant in determining whether a sentence is outside the applicable guideline range. § 5H1.1, p.s.; § 5H1.4, p.s. Age may be a reason to impose a sentence below the applicable guideline range when the defendant is elderly and infirm and another form of punishment would be equally efficient. § 5H1.1, p.s. Extraordinary physical impairment may warrant a sentence below the guideline range. § 5H1.4, p.s. Due to the severity of Griffin's crime and his actions during pretrial confinement (attempting to have several persons murdered, including a federal

judge) the district court found that another form of punishment would be inefficient. The record fully supports that finding.

Griffin's sentence is within applicable guidelines range and is not a violation of law, thus the district court is not in clear error.

AFFIRMED.