

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 6, 2022

Lyle W. Cayce
Clerk

No. 22-50081

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROBERT STEVEN POWELL,

Defendant—Appellant.

Appeal from the United States United States District Court
for the Western District of Texas
USDC No. 5:17-cr-00243

Before JONES, SOUTHWICK, and HO, *Circuit Judges.*

PER CURIAM:*

A federal jury convicted Robert Steven Powell on three counts related to tax evasion. The district court sentenced Powell to 51 months imprisonment and \$345,136.68 in restitution. Powell appeals the sentence on four grounds. The Court has carefully considered this appeal in light of the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

briefs, oral arguments, and the pertinent portions of the record. Having found no reversible error, we affirm.

Powell argues the district court erred by improperly inferring he lacked remorse due to his silence, by relying on the government's proffered summary of the evidence presented at trial in determining the restitution amount and base offense level, and by denying the defendant's request for his individual master file in preparation for sentencing. Each argument is meritless. First, when read as a whole, the sentencing transcript shows the district court didn't draw a negative inference regarding Powell's remorse based on his silence. Second, in calculating the restitution amount and base offense level, the district court relied on the PSR and a table summarizing evidence from trial that the government included in its sentencing memorandum. The table was based on evidence that the district court confirmed was presented at trial. And Powell failed to rebut that evidence because the expert report and testimony he proffered was based on counterfactual assumptions unsupported by the record in the case—something the expert admitted on cross-examination. Third, the district court didn't err in denying Powell's request for his individual master file because it was duplicative of the IRS certified transcripts and other documents the government had produced in discovery.

We affirm.