United States Court of Appeals for the Fifth Circuit

No. 22-50514
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
March 3, 2023
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANTHONY MICHAEL FLOYD,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:22-CR-6-1

Before STEWART, DUNCAN, and WILSON, *Circuit Judges*.

PER CURIAM:[*]

Anthony Floyd pleaded guilty to one count of escape under 18 U.S.C. § 751(a). The district court denied him a reduction for acceptance of responsibility because he assaulted someone before his sentencing hearing.

"Whether a defendant has accepted responsibility for a crime is a factual question and the standard of review is even more deferential than

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

clear error." *United States v. Spires*, 79 F.3d 464, 467 (5th Cir. 1996). Unless the district court's reasoning was "without foundation," its decision must stand. *United States v. Ragsdale*, 426 F.3d 765, 781 (5th Cir. 2005) (internal quotations omitted). Here, despite Floyd pleading guilty in a timely manner, the district court denied Floyd a reduction because it found he had failed to withdraw from criminal activity.

First, Floyd contends the district court erred by failing to apply the "beyond a reasonable doubt" standard when determining he had committed an assault. But "[t]he sentencing judge is entitled to find by a preponderance of the evidence *all* the facts relevant to the determination of a Guideline sentencing range[.]" *United States v. Mares*, 402 F.3d 511, 519 (5th Cir. 2005) (emphasis added). Floyd cites no controlling authority stating otherwise.

Second, Floyd contends the district court erred factually in finding that he intentionally assaulted another inmate. The parties do not dispute that Floyd entered a walk-in refrigerator with another inmate and that when they exited, the other inmate had a gash over his eye and Floyd's hand was swollen. The only dispute is whether the district court could have reasonably inferred that Floyd intentionally punched the other inmate. Given the evidence, and Floyd's lack of countervailing proof, he has not shown the district court's finding lacked foundation.

Third, Floyd contends that under a proper reading of the Sentencing Guidelines, new crimes are irrelevant to acceptance of responsibility. As he concedes, we have rejected this argument. *See United States v. Watkins*, 911 F.2d 983, 985 (5th Cir. 1990); *see also United States v. Portwood*, No. 93-1505, 1994 WL 198939, at *1 & n.8 (5th Cir. May 6, 1994) (unpublished but precedential; *see* 5TH CIR. R. 47.5.3).

AFFIRMED.