

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-3977

Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARL LOWE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CR 92-080 M2)

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(January 19, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Carl Lowe pled guilty to three drug offenses<sup>1</sup> and was sentenced to concurrent prison terms of sixty-three months and concurrent five year terms of supervised release. The court also

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

<sup>1</sup>The indictment charged one count of conspiracy to distribute cocaine in violation of 21 U.S.C. § 841(a)(1) & 846; and two counts of PCP distribution in violation of 21 U.S.C. § 841(a)(1).

imposed a total fine of \$4,000,000.<sup>2</sup> Lowe contends that the court had no basis to fine him and should have adjusted his sentence downward for acceptance of responsibility. We affirm his sentences.

We find no plain error in the trial court's decision to fine Lowe. See United States v. Matovsky, 935 F.2d 719, 722 (5th Cir. 1991). The fines were within statutory and Guideline ranges. 21 U.S.C. §§ 841(b)(1)(C) & (b)(1)(B)(ii)(II); U.S.S.G. § 5E1.2(c)(4). The PSR made no ultimate conclusion about Lowe's ability to pay a fine. Cf. United States v. Fair, 979 F.2d 1037, 1040 (5th Cir. 1992) (vacating a fine imposed after adopting a PSR which concluded the defendant was unable to pay a fine). The PSR described Lowe's ownership of several vehicles that the DEA believed were bought with drug money, as well as his interest in two houses and a small trucking business. These findings put Lowe on notice that a fine was possible. See Matovsky, 935 F.2d at 722. Cf. United States v. Landry, 903 F.2d 334 (5th Cir. 1990); United States v. Otero, 868 F.2d 1412 (5th Cir. 1989) (both vacating upward departures which were based on factors neither mentioned in the PSR nor otherwise disclosed to the defendant). Given Lowe's refusal to provide any information about his finances, the court did not plainly err in imposing an authorized fine under these circumstances. See Matovsky, 935 F.2d at 722.

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<sup>2</sup>The court imposed a \$2,000,000 fine on the conspiracy offense and \$1,000,000 on each distribution offense.

Lowe seeks to excuse his silence by arguing that he did not want to jeopardize ongoing forfeiture negotiations with the DEA. This excuse has no merit, as Lowe entered a consent decree ending those negotiations in August 1992, well before the completion of the PSR on October 1 and over two months before the completion of an addendum to the PSR on October 30.

We review Lowe's arguments about acceptance of responsibility using a standard even more deferential than a pure clearly erroneous standard. United States v. Fabregat, 902 F.2d 331, 334 (5th Cir. 1990). We find no reversible error in the trial court's assessment of Lowe's actions.

AFFIRMED