UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 90-4434
Summary Calendar

D.C. Docket No. CR-90-20003-01

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GEORGE S. ACKERSON,

Defendant-Appellant.

Appeal from the United States District Court for the Western District of Louisiana

Before KING, GARWOOD and DUHE, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the sentence imposed by the District Court in this cause is affirmed.

October 22, 1990

ISSUED AS MANDATE: DEC - 8 1990

COPY SENT
DATE 12/4/91
BY DEC
TO: Judge Hunter & R. Watkins
LC office

Clerk, U.S. Court of Appeals, Fifth Circuit
By Marie Carbone
Deputy
New Orleans, Louisiana DEC 6 1990

UNITED STATES COURT OF APPEALS
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CR90-20003-01

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

GEORGE S. ACKERSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(CR-90-20003-01)

(October 22, 1990)

Before KING, GARWOOD, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant Ackerson was convicted on his plea of guilty of conspiracy to produce counterfeit United States currency. He appeals his sentence. Finding no error, we affirm.

The district court adopted the uncontested facts of the presentence investigation report which, in pertinent part, are that appellant and his co-conspirators intended to produce and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

negotiate counterfeit currency using a laser copier belonging to codefendant Hubert. Appellant traveled to Texas and obtained enough 100% rag bond paper to produce approximately $350,000 in counterfeit $100 bills. He also provided co-defendant Canton with twelve $100 bills for use in the copying process. The initial attempt did not produce a satisfactory result so the conspirators agreed to meet again for a second attempt.

All three conspirators again met to produce and negotiate $100,000 in counterfeit currency. While in the process, appellant became aware of police surveillance and the conspirators discontinued their efforts and attempted to flee. They were arrested.

The district court adopted the sentence calculation in the presentence investigation report which provided a base offense level of nine (which appellant does not contest) and an increase of six levels (which appellant does contest). Following other adjustments not material here, a sentence range of twelve to eighteen months was determined. Appellant was sentenced to twelve months incarceration and thirty-six months of supervised release.

Sentences imposed pursuant to the sentencing guidelines will be upheld unless appellant demonstrates that the sentence was imposed in violation of law, as a result of an incorrect application of the guidelines, or was outside the range of the applicable guidelines and was unreasonable. 18 U.S.C. § 3742(e); United States v. Ebertowski, 896 F.2d 906 (5th Cir. 1990). This Court must give due regard to the opportunity of the district

court to judge the credibility of witnesses" by accepting its findings of fact unless they are clearly erroneous. 18 U.S.C. § 3742(e). Beyond even the clearly erroneous standard, this Court must give "due deference to the district court's application of the guidelines to the facts." United States v. Woolford, 896 F.2d 99 (5th Cir. 1990).

Appellant first contests the district court's addition of six points to his base offense level pursuant to § 2B5.1(b)(1) which allows an increase "if the face value of the counterfeit items exceeded $2,000." He contends that the counterfeit paper had no value since the printing was never completed. Alternatively, he argues that the face value is the aggregate numerical value printed on the counterfeit bills which is less than $2,000. Finally, he asserts that it was error for the district court to base the enhancement on the amount of currency the parties intended to produce rather than what was actually produced.

Appellant's arguments overlook § 2X1.1(a) which directs a district court in a conspiracy case to apply specific offense characteristics "for any intended offense conduct that can be established with reasonable certainty." The intent of the conspirators here is beyond question. Appellant attempts in the brief filed in this Court to question whether it was the conspirator's intent to produce $100,000 in counterfeit bills. This issue was not properly raised at the sentencing. Fed. R. Crim. P. 32(c)(3)(D); see United States v. Rodriguez, 897 F.2d

1324, 1327 (5th Cir. 1990). The district court's finding of this intent is fully supported by the record.

Next, the appellant contends that the district court erred in not decreasing his base offense level by three pursuant to § 2X1.1(b)(2). That section provides in pertinent part:

> "unless the defendant or a co-conspirator completed all the acts the conspirators believed necessary on their part for the successful completion of the offense, or the circumstances demonstrate that the conspirators were about to complete all acts but for apprehension or interruption by some similar event beyond their control."

The appellant argues that the offense could not have been successfully completed because the laser copier was not competent to produce a passable copy of the currency. Therefore, he contends, the conspiracy could not have been actually completed. This argument ignores the plain language of the guideline which requires only that the conspirators complete (but for interruption by some event beyond their control) those acts which they believed necessary to complete the conspiracy. At the time, they believed the copier capable of producing counterfeit currency. The argument is without merit.

The sentence is AFFIRMED.

A true copy
Test
Clerk, U. S. Court of Appeals, Fifth Circuit
By Marie Castaing
Deputy
New Orleans, Louisiana DEC 28 1990