

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-3140

September Term, 2000

United States,

Filed On: November 16, 2000 [556892]

Appellee

v.

Gary R. Williams,

Appellant

Appeal from the United States District Court
for the District of Columbia
(Crim. No. 98-364)

Before: Ginsburg, Randolph, and Rogers, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs of the parties. The court has determined that the issues presented occasion no need for oral argument. *See* D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's sentencing order be affirmed.

Williams argues that the district court erred in failing to reduce his sentencing level for "acceptance of responsibility" pursuant to U.S.S.G. § 3E1.1. As this court has noted, "[t]rial judges are given great latitude in administering [the] subjective test [for acceptance of responsibility]." *United States v. Washington*, 969 F.2d 1073, 1081 (1992) (citing *United States v. Taylor*, 937 F.2d 676, 680 (D.C. Cir. 1991) (giving trial judges "at the least" as much deference as under the "clearly erroneous" standard of review)).

Williams did not plead guilty and "[t]he [Sentencing] Guidelines explicitly tell judges that they normally should deny the two point reduction to a defendant who does not plead guilty." *United States v. Jones*, 997 F.2d 1475, 1478 (D.C. Cir. 1993) (en banc). There is an exception to the rule for the "rare situation" of a defendant who does not deny the factual elements of guilt but, rather, "goes

to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct).” U.S.S.G. § 3E1.1 n. 2. Williams went to trial to deny the existence of a conspiracy between himself and his co-defendant. This is a factual issue, and it is one upon which the jury convicted him. The district court committed no error, therefore, in declining to reduce Williams’ sentencing level.

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41.

Per curiam

FOR THE COURT:

Mark J. Langer, Clerk

By:

Deputy Clerk