

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 00-3037**

**September Term, 2000**

United States of America,  
Appellee

Filed On: March 23, 2001 [585002]

v.

Aloysius Frenchie Carter,  
Appellant

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Appeal from the United States District Court  
for the District of Columbia  
(No. 98cr00307-03)

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Before: SENTELLE, TATEL, GARLAND, *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 counsel. After full review of the case, the court is satisfied that appropriate disposition of the appeal does not warrant an opinion. *See* D.C. CIR. RULE 36(b). It is therefore

**ORDERED AND ADJUDGED** that the district court's denial of a two-point reduction in appellant's base offense level pursuant to U.S. Sentencing Guidelines Manual § 3B1.2(b) (1998), which permits a district court to adjust the offense level if it finds that the defendant was a "minor participant" in the offense, be affirmed.

We review the district court's fact finding for clear error and give the district court's application of law to the facts "due deference." *See United States v. Gaviria*, 116 F.3d 1498, 1518 (D.C. Cir. 1997). The relevant conduct for the district court to consider when applying section 3B1.2 is the conduct for which the defendant was ultimately sentenced. *See United States v. Olibrices*, 979 F.2d 1557 (D.C. Cir. 1992). In this case, the district court sentenced the defendant based on his participation in an April 30, 1998 drug transaction, which led to his convictions for the distribution of five grams or more of cocaine base in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(B)(iii) and the distribution of cocaine base within 1000 feet of a school in violation of 21 U.S.C. § 860(a). Contrary to the appellant's claim, the conspiracy originally alleged in the indictment is thus irrelevant for the purposes of our review. The record contains

ample evidence to support the district court's conclusion that the defendant did not play a minor role in the April 30 offense, including the testimony of an undercover police officer and the defendant's brother, a surveillance videotape, evidence that the appellant profited from the sale, and evidence that the quantity sold—26.7 grams—was substantial. In light of our highly deferential standard of review, we therefore find no basis for overturning the district court's denial of a reduction in the base offense level.

Appellant's arguments that the district court made several legal errors are also unavailing. First, the district court did not base its decision on the fact that the crime for which appellant was convicted carried a mandatory minimum sentence. Second, it was proper for the district court to consider whether the defendant profited from the drug sale as a factor in determining the scope of his role in the offense. *See United States v. Edwards*, 98 F.3d 1364, 1371 (D.C. Cir. 1996). Third, the district court's reference to a hypothetical defendant did not form the basis of the judge's actual ruling. *See id.* at 1370. Rather, the judge imposed the sentence based on the facts of appellant's particular case. Fourth, even though the district judge expressed his opinion that the man who directed appellant to make the transaction was probably a more sophisticated drug dealer, the judge did not find that appellant was less culpable. Not only is the district court not required to determine the relative culpability of offenders, but the law of this circuit makes clear that even the least culpable defendant can play an active role in the offense. *See Gaviria*, 116 F.3d at 1519-20.

Finally, appellant argues that he was entitled to a four-point reduction, pursuant to section 3B1.2(a), for being a mere courier and therefore playing a "minimal" role in the offense. Because he failed to raise this argument during the sentencing hearing, we review it for "plain error" and find none. *See United States v. Saro*, 24 F.3d 283 (D.C. Cir. 1994). The law of this circuit clearly establishes that the fact that he served as a courier does not mean that he did not play an active role in the offense. *See United States v. Caballero*, 936 F.2d 1292, 1299 (D.C. Cir. 1991).

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(a)(1).

**FOR THE COURT:**  
Mark J. Langer, Clerk