

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-2742

UNITED STATES OF AMERICA

v.

LOUIS RIDDLE,

Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Crim. No. 04-cr-00363)
Honorable William J. Nealon, District Judge

Submitted under Third Circuit LAR 34.1(a)
March 6, 2006

BEFORE: ROTH and GREENBERG, Circuit Judges, and
BUCKWALTER, District Judge*

(Filed March 14, 2006)

OPINION OF THE COURT

GREENBERG, Circuit Judge.

*Honorable Ronald L. Buckwalter, Senior Judge of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

Louis Riddle appeals from a judgment of conviction and sentence entered on May 20, 2005, after his plea of guilty to an information charging him with conspiracy by an unlawful user of controlled substances to transport and receive firearms through interstate commerce in violation of 18 U.S.C. § 371. The district court sentenced Riddle to a 42-month custodial term to be followed by a three-year term of supervised release. The district court had jurisdiction pursuant to 18 U.S.C. § 3231, and we have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

On this appeal Riddle does not challenge his conviction but advances the following contentions with respect to his sentence:

- I. The district court erred in enhancing Riddle's sentence based upon its finding by a preponderance of the evidence, that he believed he transported guns to be used for crime.
 - A. Riddle had no reason to believe that he was transporting guns for criminal purposes.
 - B. The district court improperly based its finding on facts found by a preponderance of the evidence, not beyond a reasonable doubt.
- II. The district court erred when it imposed sentence without explicitly articulating its consideration of the 18 U.S.C. § 3553(a) sentencing factors, making the sentence unreviewable and unreasonable.

Riddle's first contention relates to the court applying a 4-level enhancement under U.S.S.G. § 2K2.1(b)(5). By reason of that 4-level enhancement Riddle's total offense level was increased from 17 to 21, thus increasing his sentencing range from 27 to 33 months to 41 to 51 months predicated on his Criminal History Category of II. Section

2K2.1(b)(5) provides for a 4-level enhancement if the defendant possessed or transferred any firearm with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense. Riddle asserts that the court erred in applying this enhancement as the facts did not support it. Moreover, he contends that the court erroneously found the facts justifying application of the guideline by a mere preponderance of evidence whereas the beyond the reasonable doubt standard was applicable.

We reject these contentions for the following reasons. First, the court indicated that it was making its findings both beyond a reasonable doubt and by a preponderance of the evidence. Second, in any event, under United States v. Cooper, 2006 U.S. App. Lexis 3437 at *14, ___ F.3d ___ (3d Cir. 2006), and United States v. Miller, 417 F.3d 358, 363 (3d Cir. 2005), a finding by a preponderance of the evidence was adequate. Third, the record supports the court's findings, and thus we cannot upset them. See United States v. Ortiz, 878 F.2d 125, 126-27 (3d Cir. 1989).

We also reject Riddle's second contention. In this regard we point out that the court was well aware of the requirements of 18 U.S.C. § 3553(a) as it explicitly found that it was imposing a "reasonable [sentence] in view of the considerations expressed" in that section. App. at 75. Moreover, we are satisfied from the court's comments at the sentencing hearing that it adequately considered the applicable sentencing factors.

For the foregoing reasons the judgment of conviction and sentence entered May 25, 2005, will be affirmed.