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USA v. German

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 03-3420

UNITED STATES OF AMERICA

v.

RAFAEL GERMAN
Appellant

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Crim. Action No. 02-cr-00879-1)
District Judge: Hon. John W. Bissell

Submitted Pursuant to Third Circuit LAR 34.1(a)
April 15, 2004

BEFORE: RENDELL, STAPLETON, and LAY, * Circuit Judges

(Filed: April 19, 2004)

OPINION OF THE COURT

* Hon. Donald P. Lay, United States Circuit Judge for the Eighth Circuit, sitting by designation.

STAPLETON, Circuit Judge:

Appellant Rafael German pled guilty, pursuant to a plea agreement, to conspiracy to distribute, and possess with intent to distribute, more than 500 grams of cocaine. He was sentenced to 70 months of imprisonment.

German argues that the District Court erred in sentencing him for between five and fifteen kilograms of cocaine. However, in his plea agreement German agreed to stipulate as follows at sentencing:

The applicable guideline is § 2D1.1. This guideline carries a Base Offense Level of thirty-two, pursuant to § 2D1.1(a)(3) and (c)(4), because the offense involved at least five kilograms but less than fifteen kilograms of cocaine.

Appellee's Supp. App. at 6.

Moreover, even if German were permitted to challenge the stipulated drug quantity, the District Court would not have been clearly erroneous in finding that German was responsible for between five and fifteen kilograms of cocaine. He and his co-conspirators agreed to sell seven kilograms of cocaine to an undercover officer, and the two kilograms that were actually delivered represented the first of three installments in the drug deal. As German's Pre-Sentence Report noted, "[a]ll the other defendants agreed that the object of this conspiracy was for the distribution of seven kilograms of cocaine." PSR at 20; *see also* PSR at ¶ 23 ("German agreed to provide Rodriguez with the cocaine in installments. He would first give him two kilograms, then another two kilograms and finally three kilograms.").

The judgment of the District Court will be affirmed.