

AUG 27 1990

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 89-5181
	)	(D.C. No. 89-CR-22-02-C)
CHARLES WADE INMAN,	)	(N.D. Okla.)
	)	
Defendant-Appellant.	)	

ORDER AND JUDGMENT¹

Before MCKAY and BALDOCK, Circuit Judges, and KANE,² District Judge.

This appeal raises a single issue involving the proper application of the Sentencing Guidelines to the facts of this case. The parties agree that the initial offense level of thirteen and criminal history category of I would produce a guideline range of twelve to eighteen months. The Probation Office report determined that the defendant's criminal conduct constituted "organized criminal activity" to which the defendant raised a specific objection. The trial court's adoption of the

¹ This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

² Honorable John L. Kane, Jr., United States District Judge for the District of Colorado, sitting by designation.

presentence report resulted in a guideline range of fifteen to twenty-one months. The trial court sentenced the defendant to twenty-one months.

While there is considerable dispute over the matter, we are fully satisfied that the trial court found the underlying conduct involved organized criminal conduct as defined by the commentary to section 2B6.1(b)(3). The examples there include activities "such as an auto theft ring or 'chop shop'" operations. United States Sentencing Commission, Guidelines Manual, 2B6.1(b)(3), comment. (Nov. 1989).

Defendant challenges both the sufficiency of the evidence for such finding and the application of that rule to the facts of this case. Our careful review of the record satisfies us that on a preponderance-of-the-evidence basis there was sufficient evidence to support the trial court's finding that the facts of this case satisfy section 2B6.1(b)(3) and that the trial court correctly applied that section to the facts of this case. While the trial court made a specific finding of the value of six specific cars that were involved in this case, there was testimony that this was an ongoing operation which involved more than just those six cars. As a result, the court had sufficient evidence to conclude that the scope of the activity was clearly significant but difficult to estimate.

Because the trial court had sufficient evidence to support its findings and its findings were properly applied to the guidelines, we AFFIRM.

Entered for the Court

Monroe G. McKay
Circuit Judge