

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 04-10103-01-WEB
)	
CHARLES C. STRAWN,)	
)	
Defendant.)	
_____)	

Memorandum and Order

This matter came before the court on the defendant's objection to the Presentence Report. The court ruled orally on the objection at the sentencing hearing of January 3, 2005. This written memorandum will supplement the court's oral ruling.

Defendant objects to ¶ 32 of the PSR, which reflects a 2-level increase in the offense level based on a finding that the defendant is responsible for possession of a firearm in connection with the offense. *See* USSG 2D1.1(b)(1). Defendant points out that in the plea agreement, the parties' agreed-upon factual basis included a statement that "On February 24, 2004 [the date of the offense in Count 4], the defendant did not possess a firearm, nor was one present."

Although pursuant to the relevant conduct provisions of USSG 1B1.3 the defendant is arguably responsible for his co-defendant's possession of a firearm on the date alleged in the Presentence Report, the court will sustain the defendant's objection to this enhancement based upon the parties' stipulation of facts in the plea agreement.

Conclusion.

Defendant's objection to the Presentence Report is SUSTAINED. The court finds that the adjusted offense level is 10, and the applicable guideline range is 6 to 12 months. The court further finds that a sentence of probation with a special condition of 6 months home confinement will satisfy the minimum guideline requirement in this case and that, together with the other conditions of sentence announced at the hearing, is the appropriate disposition in this case.

The Probation Officer in charge of this case shall see that a copy of this order is appended to any copy of the Presentence Report made available to the Bureau of Prisons. IT IS SO ORDERED this 3rd Day of January, 2005, at Wichita, Ks.

s/Wesley E. Brown

Wesley E. Brown
U.S. Senior District Judge