

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

No. 07-40101-01-SAC

JOEL LEOBARDO MARTINEZ,

Defendant.

MEMORANDUM AND ORDER

The case comes before the court on the defendant's one unresolved objection to the Presentence Report ("PSR") as reflected in its addendum and addressed in the defendant's sentencing memorandum (Dk. 60). The defendant objects to the denial of a minor role adjustment. The defendant describes his involvement in the offense of conviction as only the driver of a vehicle which contained drugs and was traveling from Phoenix, Arizona, to Philadelphia, Pennsylvania. The defendant says he had no expectation of profiting from the drugs that would be eventually distributed. The defendant further denies being involved in planning the trip, packaging the drugs, purchasing the drugs, financing the operation, or negotiating the transaction.

Based on the precedent from this court and the facts as

presented in the defendant's post-arrest statement and summarized in the PSR, the court sustains the defendant's objection. While there may be inconsistencies between the post-arrest statements given by the defendant and his co-defendant Hernandez-Lopez, the court finds the defendant's statement to be credible and the inconsistencies to not be of such a kind and quality as to warrant denying the minor role adjustment.

The defendant appears to have no other role than to drive the car that had been loaded with drugs about which he did not know their kind or quantity. Recruited to drive the car, the defendant was furnished with the documents to register the car in his name and was to be paid just \$2,000 for his role. The defendant's cooperation was secured by a threat to harm the defendant's parents. The defendant was not trusted to perform his role, as he was followed by others during the trip. The defendant did not help package or load the drugs. Nor is there anything in the defendant's criminal history or in his post-arrest statement to indicate that he possessed any particular knowledge, experience, or contacts as to make his participation uniquely important to this delivery or uniquely different from a person having only a minor role in a drug trafficking conspiracy. The court sustains the defendant's objection.

With the minor role adjustment, the guideline calculations change to a base offense level of 31 less the minor role adjustment and acceptance of responsibility adjustment for a total offense level of 26. The guideline range is now 70 to 87 months.

IT IS THEREFORE ORDERED that the defendant's pending objection to the Presentence Report is sustained.

Dated this 22nd day of July, 2008, Topeka, Kansas.

s/ Sam A. Crow

Sam A. Crow, U.S. District Senior Judge