

United States Court of Appeals  
For the Eighth Circuit

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No. 18-3570

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United States of America

*Plaintiff - Appellee*

v.

Marcus Derby

*Defendant - Appellant*

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Appeal from United States District Court  
for the Western District of Arkansas - Fayetteville

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Submitted: September 23, 2019

Filed: November 4, 2019

[Unpublished]

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Before KELLY, MELLOY, and STRAS, Circuit Judges.

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PER CURIAM.

Marcus Derby received a within-Guidelines-range, 96-month prison sentence after pleading guilty to conspiracy to distribute cocaine. 21 U.S.C. §§ 841(a)(1), 846. On appeal, Derby argues that the district court<sup>1</sup> erroneously denied him a minor-

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<sup>1</sup>The Honorable Timothy L. Brooks, United States District Judge for the Western District of Arkansas.

participant adjustment. See U.S.S.G. § 3B1.2(b). Derby was a supplier of drugs distributed in the conspiracy. The district court found that, although Derby was less culpable than the two leaders of the drug trafficking organization, he was not substantially less culpable than the average participants, many of whom were street-level dealers. At sentencing, the district court commented that it may have never heard argument for a minor-role adjustment made for an upstream supplier. Regardless, we agree with the district court's finding that Derby cannot qualify for a minor role adjustment given the facts of this case, see United States v. Cubillos, 474 F.3d 1114, 1120 (8th Cir. 2007); United States v. Thompson, 60 F.3d 514, 517 (8th Cir. 1995), and we find no clear error in the district court's ruling, United States v. Brown, 929 F.3d 1030, 1041 (8th Cir. 2019) (standard of review). Accordingly, we affirm the judgment of the district court. See 8th Cir. R. 47B.

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