

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 04-14052-CR-MOORE
Magistrate Judge Lynch

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY MILTON SMITH,

Defendant.

DEFENDANT'S OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT

Defendant, Anthony Milton Smith, by and through his undersigned counsel and pursuant to Rule 32(b) (6) of the Federal Rules of Criminal Procedure, files his Objections to the Presentence Investigation Report prepared in this case. The Sentencing is currently scheduled in this cause before this Honorable Court to occur on January 25, 2005 at 1:00 p.m. in Miami, Florida.

1. The Defendant objects to paragraph 24 of the Presentence Investigation Report which provides that a role adjustment is not warranted for the Defendant. In order to determine whether the Defendant qualifies for a role adjustment, the Court must assess whether the Defendant's particular role was minor in relation to the relevant conduct attributed to him in calculating his base offense level. *United States v. DeVaron*, 175 F.3d 930, 941 (11th Cir. 1999) (*en banc*). Second, the Court is required to assess the Defendant's relative culpability against that of any other participants. *DeVaron* at 944. In other words, the Court may also measure the Defendant's conduct against that of all other participants in the criminal scheme attributed to the

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Defendant. *Id.* It is abundantly clear that the Defendant's role in this venture was significantly inferior to that of all of the other participants (and warrants a reduction).

The instant case involved the smuggling of aliens into the United States. It was organized by an individual known as "Max." As the organizer, "Max" appears to have recruited the ship's captain, Onas Richmond-Barr and his first mate, Oscar Oliver. Barr and Oliver fulfilled their duties in their respective roles while the Defendant served no role (except that of an alien who paid to be taken by boat to the United States). Due to the Defendant's lack of any meaningful participation in the venture, the Defendant requests this Court decrease his offense level pursuant to Section 3D1.2 of the Federal Sentencing Guidelines.

2. The Defendant objects to paragraph 31 of the Presentence Investigation Report which fails to provide for the Defendant's role (or lack of) in the smuggling operation. As stated in this previous objections, the Defendant requests this Court decrease the Defendant's offense level pursuant to Section 3D1.2 of the Federal Sentencing Guidelines.

3. The Defendant objects to paragraph 33 of the Presentence Investigation Report which provides for an adjusted offense level of 24. Again, the Defendant reiterates that the adjusted offense level should be reduced in accordance with Section 3D1.2 of the Federal Sentencing Guidelines.

4. The Defendant objects to paragraph 37 of the Presentence Investigation Report which provides for a total offense level of 21. The Defendant relies on Section 3D1.2 of the Federal Sentencing Guidelines requests this Court decrease the total offense level in accordance with the same.

5. The Defendant objects to paragraph 42 of the Presentence Investigation Report which provides that the Defendant failed to appear in Court and a warrant was issued on or about

August 18, 2003. The Defendant contends that he was in the custody of the United States Customs which resulted in his inability to appear at the hearing that was scheduled on or about August 18,2003. Accordingly, the Defendant requests this Court amend the Report to indicate that the failure to appear in Court was not as a result of the Defendant's intentional act.

7. The Defendant objects to paragraph 76 of the Presentence Investigation Report which provides for a total offense level of 21 along with a criminal history category of IV. The Defendant relies on its previous objections and states that the total offense level should be decreased below a level 21 (which would decrease the guideline imprisonment range in this matter).

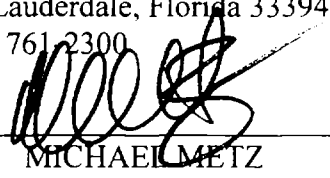
8. Other grounds to be argues *ore tenus*.

WHEREFORE, the Defendant respectfully requests this Honorable Court note his objections to the Presentence Investigation Report as set forth above. Further, for the reasons set forth and for others that will come to the attention of this Court at the Sentencing on this case, the Defendant respectfully requests this Court reduce the Defendant's guideline range in accordance with those reasons set forth.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to Assistant United States Attorney, Diana Acosta, Esquire, 505 South 2nd Street, Suite 200, Fort Pierce, Florida 34950 (facsimile number 772-219-6944) and United States Probation Officer, Patrick B. Hogan, 1111 S. Federal Highway, Suite 226, Stuart, Florida 34994 (facsimile number 772-283-3593) on this 11th day of January, 2005.

MICHAEL METZ, ESQ.
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By:

A handwritten signature in black ink, appearing to read 'Michael Metz', written over a horizontal line.

MICHAEL METZ

FBN: 0124265