

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-3838

United States of America,

Appellee,

v.

Edward Walter Kelley,

Appellant.

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* Appeal from the United States

* District Court for the

* Western District of Missouri.

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* [UNPUBLISHED]

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Submitted: January 5, 2007

Filed: January 11, 2007

Before RILEY, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Edward Walter Kelley pleaded guilty to an indictment charging that he knowingly conspired with several named individuals to knowingly manufacture 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. Kelley appeals his 120-month prison sentence, arguing that the district court¹ clearly erred by attributing 50 grams of methamphetamine to him based on drugs seized from his co-conspirators. We disagree. By pleading guilty without reservation, Kelley admitted the facts alleged in the indictment. See United States v. White, 408 F.3d

¹The Honorable Nanette K. Laughrey, United States District Judge for the Western District of Missouri.

399, 402 (8th Cir.), cert. denied, 126 S. Ct. 674 (2005). Further, the uncontested factual allegations in the presentence report indicate that nearly all of the drugs attributed to Kelley were seized from one of the named co-conspirators who was manufacturing methamphetamine with Kelley during that period, and who told officers the seized precursor drug was to be used to manufacture methamphetamine. See U.S.S.G. § 1B1.3(a)(1)(B) & comment. (n.2) (in jointly undertaken criminal activity, offense level is based on defendant's conduct and others' reasonably foreseeable conduct in furtherance of criminal activity defendant agreed to jointly undertake). Thus, we conclude the district court did not clearly err in holding Kelley responsible for 50 grams of methamphetamine, see United States v. Zimmer, 299 F.3d 710, 720-21 (8th Cir. 2002) (standard of review), which quantity subjected him to the 120-month statutory minimum, see 21 U.S.C. § 841(b)(1)(A)(viii) (10-year minimum for 50 grams or more of methamphetamine).

Accordingly, we affirm.
