

U.S. v. Wallace, 213 F.3d 645 (2000)

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Unpublished Disposition

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United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Terry A. WALLACE, Defendant-Appellant.

No. 99-30185. | D.C. No. CR-97-00062-DWM. | Argued and Submitted March 7, 2000. | Decided March 29, 2000.

Appeal from the United States District Court for the District of Montana Donald W. Molloy, District Judge, Presiding.

Before **BROWNING, B. FLETCHER** and **GOULD**, Circuit Judges.

## MEMORANDUM<sup>1</sup>

\*1 Terry Alan Wallace appeals his sentence for willful failure to file a tax return in 1992, entered pursuant to a plea agreement. He challenges the application of a two level enhancement for using sophisticated means, and the denial of a downward adjustment for acceptance of responsibility. Wallace also collaterally attacks the indictment itself, arguing that it should have been dismissed for **prosecutorial misconduct**, and that his plea was entered under duress. We reject each of his arguments, and affirm both the conviction and the sentence.

### A. Sophisticated Means

Wallace was sentenced under the 1992 Sentencing Guidelines. In 1992, U.S.S.G. § 2T1.2(b)(2) provided for a two level enhancement for willful failure to file tax returns "[i]f sophisticated means were used to impede discovery of the nature or extent of the offense ." It defined sophisticated means as "conduct that is more complex or demonstrates greater intricacy or planning than a routine tax evasion

case. An enhancement would be applied, for example, where the defendant used offshore bank accounts or transactions through corporate shells." U.S.S.G. § 2T1.2, *Application Note 2* (1992).

The district court did not abuse its discretion in enhancing Wallace's sentence under § 2T1.2. Wallace, an attorney, had no bank account in his own name. He directed his clients to deposit all payments to him in a friend's client trust account. He then had the funds transferred to one of three personal bank accounts held in another friend's name, to which he had access. Wallace states that he organized his finances in this way to hide his income and assets from a bankruptcy creditor, not the IRS. Regardless of his primary purpose, however, Wallace failed to pay any taxes on his income, and the means that he employed to hide his income and assets made it far more difficult for the IRS to detect the failure to file and to determine the nature and extent of his income and assets. This is precisely the kind of sophisticated conduct that § 2T1.2 aims to address.

Wallace argues that the enhancement should not apply to his conviction for willful failure to file tax returns because the alleged sophisticated means obscure the *amount* of his income, not the fact that he failed to file returns. This argument must fail for three reasons: first, the Sentencing Guidelines specifically provide for the enhancement in cases of willful failure to file a tax return, *see* U.S.S.G. § 2T1.2; second, the Guidelines provide for the enhancement where the sophisticated means impede discovery of the *extent* of the violation, not just its existence, *id.*; third, hiding the amount of income prevents the IRS from determining whether a taxpayer is required to file at all.

### B. Acceptance of Responsibility

Wallace also argues that the district court's failure to adjust his sentence for acceptance of responsibility was error. The Sentencing Guidelines provide for a two level decrease if a defendant "clearly demonstrates acceptance of responsibility for his offense." U.S.S.G. § 3E1.1 (1992).

\*2 Wallace admitted his criminal conduct when he entered his plea agreement and in a letter to the Probation Officer. However, Wallace's initial statements accepting responsibility were somewhat terse. His cooperation with the Probation Officer's inquiry was also less than enthusiastic;

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for example, he failed to provide necessary documentation in a timely fashion. It was only after the district court had indicated its unwillingness to grant a downward departure that Wallace made an impassioned statement of his feelings of remorse.

The district court found that Wallace had failed to demonstrate a clear acceptance of responsibility that would warrant a downward adjustment. Under the circumstances, we do not find that this was an abuse of discretion. *See United States v. Fellows*, 157 F.3d 1197 (9th Cir.1998) (upholding denial of downward adjustment for acceptance of responsibility where district court found that defendant's plea and confession not credible or sincere); *United States v. Hall*, 952 F.2d 1170 (9th Cir.1991) (defendant not entitled to reduction for acceptance of responsibility where district court found he was not contrite and that he confessed and entered a guilty plea in order to get a reduced sentence).

**C. Dismissal of Indictment for Prosecutorial Misconduct**

Wallace argues that the district court erred in failing to dismiss the indictment for prosecutorial misconduct. However, a defendant waives the right to appeal such issues when he enters into a plea agreement. *See United States v. Bohn*, 956 F.2d 208 (9th Cir.1992). Wallace contends that there is no valid waiver because his guilty plea was entered under duress. *See United States v. Blitz*, 151 F.3d 1002, 1006 (9th Cir.1998). We find the duress claim baseless, and Wallace's prosecutorial misconduct argument is therefore barred.

AFFIRMED

**Parallel Citations**

2000 WL 329170 (C.A.9 (Mont.))

**Footnotes**

- <sup>1</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.