

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
5

6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
7 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY
8 OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY
9 OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED
10 CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES
11 JUDICATA.
12

13 At a stated term of the United States Court of Appeals for
14 the Second Circuit, held at the Thurgood Marshall United States
15 Courthouse, at Foley Square, in the City of New York, on the
16 6th day of October, two thousand and four.
17

18 PRESENT:
19

20 Hon. John M. Walker, Jr.,
21 Chief Judge,
22 Hon. Chester J. Straub,
23 Circuit Judge,
24 Hon. Jed S. Rakoff,
25 District Judge.*
26

27 -----X
28

29 UNITED STATES OF AMERICA,
30

31 Appellee,
32

33 - v. -
34

No. 04-1160-cr
35

36 GEORGE LAMMERS, also known as Johnny Blaze,
37

38 _____
39 Defendant-Appellant.
40

41 -----X
42

43 APPEARING FOR APPELLANT:

THOMAS A. ZONAY, Ford & Zonay,
P.C., Woodstock, VT.

APPEARING FOR APPELLEE:

TRISTRAM J. COFFIN, Assistant

*The Honorable Jed S. Rakoff, United States District Judge
for the Southern District of New York, sitting by designation.

1 United States Attorney (Peter
2 W. Hall, United States
3 Attorney for the District of
4 Vermont, David V. Kirby, First
5 Assistant United States
6 Attorney, on the brief),
7 Burlington, VT.
8

9 Appeal from the United States District Court for the
10 District of Vermont (William K. Sessions, Chief Judge).

11
12 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**
13 **DECREED** that the judgment of the district court be and it hereby
14 is **AFFIRMED**.

15 Defendant-appellant George Lammers appeals from a judgment
16 entered on March 1, 2004 in the United States District Court for
17 the District of Vermont (William K. Sessions, Chief Judge)
18 convicting him, following his guilty plea, of directing a
19 continuing criminal enterprise trafficking in ecstasy (MDMA),
20 cocaine, and other controlled substances, in violation of 21
21 U.S.C. § 848. Familiarity with the facts and procedural history
22 is assumed.

23 On appeal, Lammers challenges the district court's
24 imposition of a fine under U.S.S.G. § 5E1.2(a), in spite of the
25 Presentence Report's ("PSR") finding of indigence, and contends
26 that the district court's conclusion that he could pay the fine
27 was speculative. We review Judge Sessions' factual findings for
28 clear error, see United States v. Thompson, 227 F.3d 43, 45 (2d
29 Cir. 2000), and conclude that the district court did not err in
30 determining that Lammer's could pay a \$50,000 fine.

31 U.S.S.G. § 5E1.2(a) provides: "The court shall impose a
32 fine in all cases, except where the defendant establishes that he
33 is unable to pay and is not likely to become able to pay any
34 fine." The defendant bears the burden of showing that he is
35 indigent. See United States v. Corace, 146 F.3d 51, 56 (2d Cir.
36 1998); United States v. Marquez, 941 F.2d 60, 66 (2d Cir. 1991).
37 "While a sentencing court may not base the imposition of a fine
38 on mere suspicion that the defendant has funds, it should not
39 uncritically accept a defendant's representation that he has no
40 assets." United States v. Kassar, 47 F.3d 562, 567 (2d Cir.
41 1995), abrogated on other grounds, United States v. Mercurris,
42 192 F.3d 290, 294 (2d Cir. 1999). "[A]n inference that a
43 defendant has funds may be drawn from circumstantial evidence,"
44 United States v. Wong, 40 F.3d 1347, 1383 (2d Cir. 1994), and
45 "evidence of lucrative illegal activity can support a judge's
46 finding that a defendant is able to pay a fine levied against

1 him," Kassar, 47 F.3d at 567 (quoting United States v. Orena, 32
2 F.3d 704, 716 (2d Cir. 1994)).

3 For substantially the same reasons advanced by Judge
4 Sessions at the sentencing hearing, we conclude that the district
5 court did not err in imposing the fine. Although the PSR stated
6 Lammers was indigent, the district court was entitled to reject
7 defendant's self-serving claims based on other circumstantial
8 evidence contained in the PSR and offered during the sentencing
9 hearing. See Kassar, 47 F.3d at 567; Wong, 40 F.3d at 1383.
10 Here, abundant evidence was presented that demonstrated Lammers
11 directed a complex and lucrative drug smuggling operation, and
12 the court was permitted to rely on this information in
13 determining plaintiff's ability to pay a fine. See Kassar, 47
14 F.3d at 567; Orena, 32 F.3d at 716.

15 We have carefully considered all of Lammers' remaining
16 arguments and find them to be without merit.

17 Accordingly, and for the foregoing reasons, the judgment of
18 the district court is hereby **AFFIRMED**.

19
20 FOR THE COURT:

21 Roseann B. MacKechnie, Clerk
22

23
24 By: _____

25 Lucille Carr, Deputy Clerk