

June 13, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10896
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS GARCIA, JR., also known as Jesus Garcia,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:06-CR-29-ALL

Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:*

Jesus Garcia, Jr., appeals the 188-month sentence imposed following entry of his guilty plea to possession with intent to distribute methamphetamine. Garcia asserts that the district court erred by imposing an increase for obstruction of justice and by denying a decrease for acceptance of responsibility.

Garcia contends that his sentence is so "unconstitutionally excessive" as to be cruel and unusual, in violation of the Eighth Amendment. Because Garcia's constitutional challenge is raised

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

for the first time, we review for plain error only. See United States v. Villegas, 404 F.3d 355, 358-59 (5th Cir. 2005). To obtain relief, Garcia must demonstrate error that is clear and obvious and that affects his substantial rights. Villegas, 404 F.3d at 358. If these conditions are met, we may exercise discretion to notice the forfeited error provided that the error "seriously affects the fairness, integrity, or public reputation of judicial proceedings." Id. at 358-59 (internal quotation marks and citations omitted).

The district court sentenced Garcia at the bottom of the applicable sentencing guidelines range; the Guidelines are a "convincing objective indicator of proportionality." United States v. Cardenas-Alvarez, 987 F.2d 1129, 1134 (1993) (internal quotation marks and citation omitted). Garcia's sentence is not grossly disproportionate to his offense and does not violate the Eighth Amendment. See United States v. Gonzales, 121 F.3d 928, 943 (5th Cir. 1997) (citing Rummel v. Estelle, 445 U.S. 263 (1980)). Garcia has not shown error, much less plain error.

Findings regarding obstruction of justice and acceptance of responsibility are reviewed for clear error. United States v. Outlaw, 319 F.3d 701, 705 (5th Cir. 2003); United States v. Edwards, 303 F.3d 606, 646 (5th Cir. 2002). The district court's findings are plausible in light of the record as a whole and are not clearly erroneous. See United States v. Myers, 198 F.3d 160, 164 (5th Cir. 1999). The district court's judgment is AFFIRMED.