IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
January 4, 2019

Lyle W. Cayce
Clerk

No. 17-11516
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

EDWARD JENNINGS, also known as Ez Mayne,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:16-CR-373-7

Before BARKSDALE, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Edward Jennings pleaded guilty to conspiracy to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), 846; he was sentenced, *inter alia*, to 144 months' imprisonment. Jennings claims the district court procedurally erred in: failing to grant a downward departure for overrepresentation of Jennings' criminal history under Sentencing Guideline § 4A1.3(b)(1), and failing to explain adequately the reasons for denying the motion; applying a

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

two-level enhancement for being an organizer, leader, manager, or supervisor under Guideline § 3B1.1(c), and failing to explain adequately the reasons for overruling the objection; and calculating the drug quantity for which Jennings was responsible under Guideline § 2D1.1. (To the extent Jennings may claim his sentence was substantively unreasonable, that claim is inadequately briefed, and is, therefore, abandoned. *E.g.*, *United States v. Charles*, 469 F.3d 402, 408 (5th Cir. 2006) (citations omitted).)

Although post-*Booker*, the Sentencing Guidelines are advisory only, the district court must avoid significant procedural error, such as improperly calculating the Guidelines sentencing range. *Gall v. United States*, 552 U.S. 38, 48–51 (2007). If no such procedural error exists, a properly preserved objection to an ultimate sentence is reviewed for substantive reasonableness under an abuse-of-discretion standard. *Id.* at 51; *United States v. Delgado-Martinez*, 564 F.3d 750, 751–53 (5th Cir. 2009). In that respect, for issues preserved in district court, its application of the Guidelines is reviewed *de novo*; its factual findings, only for clear error. *E.g.*, *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008).

On the other hand, for issues not raised in district court, review is only for plain error. *E.g.*, *United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). Under that standard, Jennings must show a forfeited plain (clear or obvious) error that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he does so, we have the discretion to correct the reversible plain error, but should do so only if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings". *Id.*

As noted, Jennings claims five procedural errors. But, for his first contention, we "lack jurisdiction . . . to review a sentencing court's refusal to grant a downward departure unless the court based its decision upon an

erroneous belief that it lacked the authority to depart". *United States v. Fillmore*, 889 F.3d 249, 255 (5th Cir. 2018) (internal quotation marks and citation omitted). Jennings does not claim the court mistakenly believed it lacked such authority, and nothing in the record indicates this was the case. And, because he did not object in district court to its explanation for the denial, or request a more substantial explanation for it, review is only for plain error. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009). Jennings has not shown the requisite clear or obvious error in the light of the court's stated reasons for rejecting his downward-departure request.

With respect to Jennings' next contention, because he objected in district court to the application of the two-level Guideline § 3B1.1(c) enhancement, we review the finding he was a leader or organizer under § 3B1.1(c) for clear error. *See United States v. Ochoa-Gomez*, 777 F.3d 278, 281–82 (5th Cir. 2015) (citations omitted). But, because he did not object in district court to its claimed failure to explain adequately the reasons for overruling the objection, review of that claim is only for plain error. *See Mondragon-Santiago*, 564 F.3d at 361.

The district did not clearly err by finding Jennings qualified for the enhancement. An FBI agent testified at sentencing that the manager of Jennings' apartment complex stated Jennings was in charge of the drug sales in the complex and had individuals selling drugs for him; this testimony is supported by surveillance conducted on the complex. And, although Jennings is correct the court did not make explicit its reasons for overruling his objection to the enhancement, he has failed, at a minimum, to demonstrate any error affected his substantial rights because he has not explained how a detailed explanation would have changed his sentence. *See Mondragon-Santiago*, 564 F.3d at 365.

Jennings' final contention is likewise meritless. Law enforcement testified at sentencing that, based on wiretaps and the statements of a cooperating defendant, Jennings primarily dealt in crack cocaine. These telephone calls often involved code language for quantities and types of drugs, with Jennings frequently failing to specify the amount and type of drug he was requesting, but instead requesting "the same thing" or his "regular". Based on the statements of a cooperating defendant who told law enforcement he sold Jennings seven grams of crack cocaine almost daily, that amount was attributed to Jennings for every day for which he made a nonspecific request for drugs, with nothing being attributed to Jennings on days he was not picked up on the wiretap.

While Jennings suggests the court erred by extrapolating the drug quantity attributable to him based on a finding he specifically purchased crack cocaine (rather than powder cocaine or marijuana), which led to a higher drug quantity attributable to him, Jennings has the burden to demonstrate that the presentence investigation report's (PSR) information is "materially untrue, inaccurate or unreliable". *United States v. Carbajal*, 290 F.3d 277, 287 (5th Cir. 2002) (internal quotation marks and citation omitted). He failed to present any competent evidence which would have refuted the drug quantity stated in the PSR. *See United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012). Accordingly, the factual finding as to drug quantity is "plausible in light of the record as a whole". *United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005) (internal quotation marks and citations omitted); *United States v. Valdez*, 453 F.3d 252, 267 (5th Cir. 2006).

AFFIRMED.