

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10544
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 9, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

MICHAEL PERALES,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 1:17-CR-74-1

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Michael Perales appeals his 96-month within-guidelines sentence for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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felony possession of firearms and ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He challenges the procedural reasonableness of the sentence, contending that the district court did not provide sufficient reasons for rejecting his argument for a sentence at the bottom of the guidelines range. He also urges that the court plainly erred in treating his prior federal bank robbery conviction under 18 U.S.C. § 2113(a) as a crime of violence under U.S.S.G. § 4B1.2, but he concedes that that issue is foreclosed by our precedent; he raises it solely to preserve it for further review. *See United States v. Brewer*, 848 F.3d 711 (5th Cir. 2017). Accordingly, we do not address that issue further.

With regard to the adequacy of the explanation for his sentence, Perales contends that plain-error review should not apply based on *Chavez-Meza v. United States*, 138 S. Ct. 1959 (2018), and because he was not given the opportunity to object. *Chavez-Meza* is inapposite because it involved a sentence reduction under 18 U.S.C. § 3582(c)(2) and did not abrogate our precedent applying plain-error review to issues that received no objection at original sentencing hearings. *See Chavez-Meza*, 138 S. Ct. at 1963–68; *United States v. Gerezano-Rosales*, 692 F.3d 393, 398–400 (5th Cir. 2012); *Burge v. Par. of St. Tammany*, 187 F.3d 452, 466 (5th Cir. 1999). Further, although, after imposing the sentence, the district court stated, “You may stand aside,” that statement did not prevent Perales or his counsel from objecting to the sentence. *Cf. Gerezano-Rosales*, 692 F.3d at 399; *see also United States v. Morales*, 299 F. App’x 455, 457 (5th Cir. 2008) (rejecting argument that plain-error review applied where the defendant was ordered to “stand aside” after sentencing).

Accordingly, we review for plain error. Perales must show a forfeited error that is clear or obvious and that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing,

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we have the discretion to correct the error, but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

The district court listened to Perales's reasons for requesting a sentence at the bottom of the recommended guidelines range, including the fact that he had cancer. The court then explicitly stated that "the specific reasons for imposing the sentence" were the "sentencing objectives of punishment and deterrence." Even if the district court "might have said more," the record makes clear that the court considered the evidence and arguments, and its statement of reasons was sufficient legally. *See Rita v. United States*, 551 U.S. 338, 358–59 (2007); *see also United States v. Mondragon-Santiago*, 564 F.3d 357, 365 (5th Cir. 2009). Thus, Perales has not shown a clear or obvious error with respect to the adequacy of the reasons. *See Puckett*, 556 U.S. at 135. Moreover, he has not shown that the alleged error affected his substantial rights, because he has not established that a more thorough explanation would have resulted in a lower sentence. *See Mondragon-Santiago*, 564 F.3d at 364–65.

AFFIRMED.