

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

No. 18-40845

United States Court of Appeals
Fifth Circuit

FILED

August 6, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JESUS GUADALUPE MEDRANO-VELASCO,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:18-CR-664-1

Before STEWART, Chief Judge, and JONES and OWEN, Circuit Judges.

PER CURIAM:*

This is an appeal from a district court's denial of a mitigating role adjustment to a defendant's sentencing guideline range after the defendant pleaded guilty to a drug offense. Finding no clear error in the district court's decision, we AFFIRM.

I.

Jesus Guadalupe Medrano-Velasco ("Medrano") pled guilty to importing 500 grams or more of methamphetamine in violation of 21 U.S.C. §§ 952 and

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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960. Medrano was arrested at a border checkpoint after agents found roughly ten kilograms of methamphetamine in a speaker box in the truck he was driving. Medrano admitted to knowing that he was carrying contraband but stated that he did not know what specifically the box contained. Medrano said that he expected to be paid \$1,000 to carry the box into the United States and leave it in his unlocked trailer at a convenience store.

The advisory guideline sentencing range in Medrano's pre-sentencing report ("PSR") was 168 to 210 months in prison, based on a Criminal History Category of I (no points) and a total offense level of 35 that included a three-level reduction for acceptance of responsibility and a two-level safety-valve reduction. Medrano argued at sentencing that he was entitled to a downward mitigating role adjustment for being a minimal or minor participant because he was merely a courier "at the bottom of the totem pole." The court stated that it did not believe Medrano qualified for any downward role adjustment but that a downward variance from the guideline sentencing range was proper on other grounds based on Medrano's "particular background and circumstances and considering that the guidelines here are driven by the type of drug involved." The court then varied downward and sentenced Medrano to 140 months.

On appeal, Medrano argues only that he should have received a mitigating role adjustment of at least two levels.

II.

A district court's factual findings in denying a mitigating role adjustment are reviewed for clear error. *United States v. Sanchez-Villarreal*, 857 F.3d 714, 721 (5th Cir. 2017). "A factual finding is not clearly erroneous if it is plausible in light of the record as a whole." *Id.* (internal quotation marks and citation omitted). The burden of proof is on the defendant "to show that he is entitled to the adjustment." *Id.* (citation omitted).

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A defendant who “was a minimal participant in any criminal activity” is entitled to a four-level decrease in the offense level. U.S.S.G. § 3B1.2(a). A “minimal participant” is one who is “plainly among the least culpable of those involved in the conduct of a group.” § 3B1.2, cmt. n.4. A “defendant’s lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as a minimal participant.” *Id.* A “minor participant,” in contrast, is entitled to a two-level reduction. § 3B.1(b). A minor participant is defined as a defendant “who is less culpable than most other participants in the criminal activity, but whose role could not be described as minimal.” § 3B1.2, cmt. n.5. And when a defendant’s role is between “minimal” and “minor,” the reduction is three levels. § 3B1.2.

A district court determines whether to apply a mitigating role adjustment “based on the totality of the circumstances,” and its decision is “heavily dependent upon the facts of the particular case.” § 3B1.2, cmt. n.3(C). In doing so, the court compares the defendant to other participants in the particular crime before the court and not to the broader universe of participants in similar crimes. *United States v. Gomez-Valle*, 828 F.3d 324, 329 (5th Cir. 2016). Importantly for purposes of this case, the sentencing guidelines commentary was recently amended to clarify that a defendant is not disqualified from receiving a sentencing reduction purely because he “performs an essential or indispensable role in the criminal activity.” § 3B1.2, cmt. n.3(C). The amendment was designed to correct a trend in several circuits in which defendants were denied a mitigating role adjustment “solely because [they were] integral or indispensable to the commission of the offense.” *Gomez-Valle*, 828 F.3d at 329 (internal quotation marks and citation omitted). Furthermore, the amendment “provides that a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to

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perform certain tasks should be considered for an adjustment under this guideline.” *Id.* at 330 (internal quotation marks and citation omitted).

Here, Medrano told the district court that other individuals owned the drugs, brokered the deal, hired people to load the vehicles, and hired drivers to drive them across the border. He argued that the record shows that he was simply a courier who was paid a small amount of money to do a single task; that he had no apparent knowledge of the scope and structure of the overall enterprise and did not plan or organize the criminal activity; that his participation was limited to driving a truck to a particular location and leaving it there; and that his only benefit was a payment of \$1,000, as he had no proprietary interest in the criminal activity. In sum, Medrano argued that his role was that of the archetypical clueless courier.

On appeal, Medrano argues that the district court implicitly recognized his lack of knowledge of the broader scheme when it reprimanded him at the sentencing hearing for not bothering to learn what he was carrying and focusing only on getting paid. The district court stated that it had read the PSR and that it did not believe Medrano qualified for any role reduction, but it did not specify which factors in the case cautioned against granting a mitigating role adjustment. Medrano argues that the district court’s reference to the PSR implies that the court relied on one of the specific reasons for denying the downward adjustment listed in the PSR when it made its decision. The PSR, in turn, cited only two reasons why Medrano should not have been considered a minimal or minor participant. Medrano contends that one of those arguments—that Medrano could not have been a minimal or minor participant because a low-level actor with no broader knowledge “would not have been entrusted” with “a substantial amount of methamphetamine which contained an extremely high purity”—was rejected by the district court when it commented on Medrano’s failure to learn what he was transporting.

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According to Medrano, this means that the district court based its decision entirely upon the only other factor cited by the PSR, which was that Medrano's courier role was "crucial to the drugs being transported across the border." He accurately notes that this court has already held that it is error for courts to rely on a defendant's role being "critical" to the offense as the sole reason for denying a downward adjustment. *See Sanchez-Villarreal*, 857 F.3d at 721–22. But Medrano's argument reads the record and the district court's statements far too narrowly and flips the burden of proof onto the court. Moreover, that the PSR argued that Medrano's actions were "crucial" to the commission of the offense does not, by itself, show clear error. This court has upheld denials of mitigating role adjustments when the defendant's integral role in the offense was only one of multiple factors relied on by the district court. *See, e.g., United States v. Bello-Sanchez*, 872 F.3d 260, 264–65 (5th Cir. 2017).

Medrano did not offer any evidence that his role was as minimal or as minor as he claimed, and he therefore did not carry his burden of proving that he was entitled to a mitigating role adjustment. Furthermore, as the government notes, Medrano's statements about his knowledge of the contraband appeared to be inconsistent, and he volunteered his trailer for use in the operation. There is ample evidence in the record to support the district court's decision, and no firm evidence to back up Medrano's claim that he was a minimal or minor participant in the drug-trafficking offense. In other words, there is no evidence that the district court's decision was clearly erroneous.

III.

For the foregoing reasons, we **AFFIRM** the sentence imposed by the district court.