United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 30, 2020

Lyle W. Cayce
Clerk

No. 20-10106
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

AGUSTIN MADRID, *also known as* AUGUSTIN MADRID,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-273-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges*.

PER CURIAM:*

Agustin Madrid appeals his 188-month, within-guidelines range sentence for possession with intent to distribute a mixture and substance containing a detectable amount of methamphetamine. He contends that the district court procedurally erred by determining, in denying his motion for a

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* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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downward variance, that it lacked discretion to impose a downward variance based on a policy disagreement with the Guidelines. Because Madrid did not object in the district court on that specific ground, we review this issue for plain error. *See United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013).

In light of the entire record, it is neither clear nor obvious—but, rather, subject to reasonable dispute—that the district court's comments reflected a belief that it lacked discretion to impose a variant sentence based on a policy disagreement with the drug Guidelines. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). The court expressly stated that it would take Madrid's policy-based arguments into consideration in setting his sentence. And the court explicitly based its denial of a variance on the arguments in the Government's response to Madrid's motion, which addressed only the merits of Madrid's policy-based contentions and made no reference to the court's (lack of) discretion to grant a policy-based variance. Accordingly, Madrid fails to demonstrate plain procedural error. *See id.*

The judgment is AFFIRMED.