

United States Court of Appeals for the Fifth Circuit

No. 23-10456
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 7, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RICO MARION,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-230-2

Before JONES, SMITH, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Rico Marion appeals the sentence imposed following his conviction for conspiracy to possess with intent to distribute methamphetamine. His guidelines range calculation included an enhancement pursuant to U.S.S.G. § 2D1.1(b)(16)(B)(i) for involving an individual that Marion knew was under

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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18 years of age in the offense. Marion renews his argument that the district court did not have sufficient evidence that he knew the minor's age.

We review the district court's factual findings for clear error. *See United States v. Caldwell*, 448 F.3d 287, 290 (5th Cir. 2006). The district court based its finding of knowledge on evidence showing that Marion referred to the minor as "young" and "little" in his post-arrest interview as well as Marion's lack of surprise when informed in the interview that the minor was fifteen. The district court's findings are "plausible in light of the record as a whole" and are, therefore, not clearly erroneous. *Id.*

AFFIRMED.