

United States Court of Appeals for the Fifth Circuit

No. 23-30877
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 14, 2025

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

UNITED STATES OF AMERICA,

versus

ARISA JOHNSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:22-CR-17-3

Before BARKSDALE, HAYNES, and WILSON, *Circuit Judges.*

PER CURIAM:*

Arisa Johnson challenges his within-Guidelines 168-months' sentence, imposed following his guilty-plea conviction for conspiracy to possess, with intent to distribute, methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), and 846. In doing so, he contests the district

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

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court's application of a two-level aggravating-role enhancement under Sentencing Guideline § 3B1.1(c) (quoted *infra*).

Although post-*Booker*, the 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, 46, 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).

The Government contends the issue at hand was not preserved by a sufficiently specific objection in district court. We assume, without deciding, that Johnson preserved the contention he presents on appeal. *See United States v. Rodriguez*, 602 F.3d 346, 361 (5th Cir. 2010) (declining to decide standard of review when claim fails under more lenient standard).

The Guideline at issue provides for a two-level enhancement if “defendant was an organizer, leader, manager, or supervisor in any criminal activity” involving fewer than five participants. U.S.S.G. § 3B1.1(c). Whether defendant occupied an aggravating role is a factual finding, reviewed for clear error. *United States v. Ochoa-Gomez*, 777 F.3d 278, 281–82 (5th Cir. 2015). “A factual finding that is plausible based on the record as a whole is not clearly erroneous.” *Id.* at 282.

The district court did not clearly err by applying the enhancement. *Id.* at 281. In that regard, the record as a whole plausibly supports the application of Guideline § 3B1.1(c). *Inter alia*, Johnson recruited at least one coconspirator; paid the recruit for his role in the conspiracy; and arranged for

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the recruit to accept and store numerous shipments of large quantities of drugs, which Johnson would later retrieve. *See Ochoa-Gomez*, 777 F.3d at 282 (factors supporting application of enhancement include “exercising control over another participant or exercising management responsibility over property, assets, or activities”); § 3B1.1 cmt. n.4 (factors to consider); *United States v. Guzman-Reyes*, 853 F.3d 260, 265–66 (5th Cir. 2017).

AFFIRMED.