

United States Court of Appeals for the Fifth Circuit

No. 23-50168
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 13, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JEVON BELL,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:22-CR-215-1

Before KING, HAYNES, and GRAVES, *Circuit Judges*.

PER CURIAM:*

Jevon Bell appeals the sentence imposed for his guilty plea conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). The district court applied a cross-reference, under U.S.S.G. § 2K2.1(c), to the guideline for attempted first degree murder

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

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under U.S.S.G. § 2A2.1(a)(1), and assessed a base offense level of 33. Bell was sentenced to a statutory maximum term of 120 months of imprisonment.

Bell argues that the district court erred by applying the cross-reference because the Government failed to make the requisite showing that he had the specific intent to kill. He does not dispute that, after getting in a physical altercation with his ex-girlfriend and beginning to drive away, he returned to the residence and began shooting a handgun in her general direction. Several shots hit the vehicle Bell's ex-girlfriend was hiding behind.

“This court reviews a district court’s factual findings during sentencing for clear error and its interpretation of the Sentencing Guidelines, including its application of the cross-reference provisions of § 2K2.1(c), *de novo*.” *United States v. Hicks*, 389 F.3d 514, 529 (5th Cir. 2004). “[F]acts relevant to sentencing must be proven by a preponderance of the evidence.” *United States v. Alfaro*, 30 F.4th 514, 518 (5th Cir. 2022).

Having reviewed the record, the parties’ arguments, and the applicable law, we conclude that Bell has shown no error. *See, e.g. United States v. Shaw*, 701 F.2d 367, 392 n.20 (5th Cir. 1983) (abrogation on other grounds by recognized by *United States v. Burden*, 964 F.3d 339, 345 (5th Cir. 2020); *see also United States v. Lemus-Gonzalez*, 563 F.3d 88, 92 (5th Cir. 2009) (discussing the three distinct mental states encompassed by “malice aforethought.”)

The judgment of the district court is AFFIRMED.