

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

United States Court of Appeals
Fifth Circuit

FILED

February 11, 2020

Lyle W. Cayce
Clerk

No. 19-40167
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DARIEUS MALIK WILLIAMS,

Defendant-Appellant

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 7:17-CR-1843-1

Before BENAVIDES, DENNIS, and OLDHAM, Circuit Judges.

PER CURIAM:*

Daricus Malik Williams appeals his within-guidelines 262-month term of imprisonment for child sex trafficking, in violation of 18 U.S.C. §§ 2 and 1591. He argues that the district court committed reversible procedural error by applying an enhancement under U.S.S.G. § 2G1.3(b)(4)(A), which calls for a two-level enhancement if the offense involved the commission of a sex act or sexual contact; by finding that he unduly influenced a minor to engage in

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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prohibited sexual conduct such that a two-level enhancement under U.S.S.G. § 2G1.3(b)(2)(B) was warranted; and by applying a two-level aggravating role enhancement under U.S.S.G. § 3B1.1(c). Because he has preserved these issues for appeal, we review the district court's interpretation and application of the Sentencing Guidelines de novo and its findings of fact for clear error. *See United States v. Serfass*, 684 F.3d 548, 550 (5th Cir. 2012).

Although Williams argues that the application of § 2G1.3(b)(4)(A) constitutes impermissible double counting because the commission of a sex act or sexual conduct is an element of the offense of child sex trafficking under § 1591(a), he correctly concedes that this court rejected that same argument in *United States v. Anderson*, 560 F.3d 275, 283 (5th Cir. 2009), and he raises the issue to preserve it for further review.

As for his argument that there is no evidence that he unduly influenced the minor victims to engage in prostitution for purposes of § 2G1.3(b)(2)(B), we disagree and conclude that it is plausible in light of the record as a whole that Williams's conduct "compromised the voluntariness" of the victims' behavior. *United States v. Smith*, 895 F.3d 410, 417 (5th Cir. 2018) (quoting § 2G1.3(b)(2)(B), cmt. (n.3(B))). We also disagree with Williams's assertion that the presentence report did not provide an adequate basis for inferring that his conduct warranted an aggravating role enhancement under § 3B1.1(c). Williams failed to satisfy his burden of presenting evidence to show that the facts in the presentence report are inaccurate or materially untrue. *See United States v. Cervantes*, 706 F.3d 603, 620-21 (5th Cir. 2013). Moreover, in light of the record as a whole, a plausible and permissible view of the evidence is that Williams, who admitted that his family was in the prostitution business, coordinated, organized, or managed some aspect of the criminal activity and

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that he managed, organized, or supervised at least one other culpable participant in the criminal activity.

Accordingly, the district court's judgment is **AFFIRMED**.