

United States Court of Appeals for the Fifth Circuit

No. 22-50726
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 20, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAMES ROBERT CUPPLES,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:21-CR-367-1

Before JOLLY, SMITH, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

James Robert Cupples pleaded guilty to one count of receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2) and (b)(1). The district court sentenced him to 198 months of imprisonment, to be followed by 10 years of supervised release. Cupples challenges the application of a higher offense level under U.S.S.G. § 2G2.1 by operation of the cross-reference in

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

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U.S.S.G. § 2G2.2(c)(1), which “is to be construed broadly.” § 2G2.2, comment. (n.7(A)). We review the district court’s interpretation and application of the Guidelines de novo and its factual findings for clear error. *See United States v. Ferris*, 52 F.4th 235, 239 (5th Cir. 2022), *cert. denied*, 143 S. Ct. 846 (2023).

The record supports the district court’s determination that the Government proved, by a preponderance of the evidence, that Cupples caused a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct. *See* § 2G2.2, comment. (n.7(A)); *United States v. Landreneau*, 967 F.3d 443, 451 (5th Cir. 2020); *United States v. Rodriguez*, 630 F.3d 377, 380 (5th Cir. 2011). And as Cupples concedes, the court properly enhanced his sentence under § 2G2.1(b)(2)(A) because the offense involved the commission of sexual contact. *See United States v. Butler*, 65 F.4th 199, 201-03 (5th Cir. 2023); *United States v. Salinas*, 918 F.3d 463, 465 (5th Cir. 2019).

The judgment of the district court is AFFIRMED.