United States Court of Appeals for the Fifth Circuit

No. 24-50456
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
June 5, 2025
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

HENRY P. ARREDONDO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:22-CR-1880-1

Before BARKSDALE, STEWART, and RAMIREZ, *Circuit Judges*.

PER CURIAM:[*]

Henry P. Arredondo challenges his within-Guidelines 97-months' sentence, imposed following his guilty-plea conviction for possession of material containing child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). He contends the district court erred in applying a five-level enhancement under Sentencing Guideline § 2G2.2(b)(7)(D) because

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

the evidence did not prove his offense involved 600 or more images of child pornography. Instead, he asserts the court should have applied the two-level enhancement under § 2G2.2(b)(7)(A), which applies if the offense involved at least 10 images but fewer than 150, based on the 46 images found on his cellular telephone after his arrest.

Arredondo did not preserve this issue in district court (as he also concedes). Because the issue was not preserved, review is only for plain error. *E.g.*, *United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). (Arguably, because Arredondo stated, in response to the court's inquiry at sentencing, that he did not object to the enhancement now at issue, including stating that it was "properly calculated", he waived it, precluding our review.) Under the plain-error standard, he must show a forfeited plain error (clear-or-obvious error, rather than one subject to reasonable dispute) that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes that showing, we have the discretion to correct the reversible plain error, but generally should do so only if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings". *Id.* (citation omitted).

Arredondo admitted to receiving and distributing over 600 images of child pornography over an unspecified 30-day period in the past, but he asserts that period is insufficiently temporally linked to the underlying offense of conviction to constitute "relevant conduct" under Guideline § 1B1.3.

Guideline § 3D1.2 requires "[a]ll counts involving substantially the same harm" to be grouped together, which includes offenses under § 2G2.2. For grouped offenses, relevant conduct includes all acts and omissions that "were part of the same course of conduct or common scheme or plan as the offense of conviction". U.S.S.G. § 1B1.3(a)(2). Offenses may qualify as part

of the "same course of conduct if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses". § 1B1.3, cmt. n.5(B)(ii). To determine whether offenses are sufficiently connected or related, the courts consider "the degree of similarity of the offenses, the regularity (repetitions) of the offenses, and the time interval between the offenses". *Id.*

When sentencing Arredondo, the district court relied on the facts contained in the presentence investigation report (PSR), including the following undisputed facts: Arredondo admitted he had been using online applications to receive and distribute child pornography since 2017 until around September 2021; he admitted to authorities that over the course of one month (30 days), he would distribute five videos and receive 30 images of child pornography daily; he stated that he deleted all content and applications containing child pornography from his cellular telephone in September 2021; and a search of his cellular telephone revealed 46 images related to child sex-abuse material. Accordingly, the PSR recommended the five-level enhancement under Guideline § 2G2.2(b)(7)(D) because the "offense involved 600 or more images". (Video clips "shall be considered to have 75 images". U.S.S.G. § 2G2.2 cmt. n.6(B)(ii).)

Consistent with the preponderance-of-the-evidence standard applied at sentencing in making findings of fact, *e.g.*, *United States v. Alaniz*, 726 F.3d 586, 618–19 (5th Cir. 2013), district courts may consider any evidence bearing a "sufficient indicia of reliability to support its probable accuracy", and such evidence generally includes PSRs. *United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012) (citations omitted). Accordingly, "[t]he district court may adopt the facts contained in a [PSR] without further inquiry if those facts have an adequate evidentiary basis with sufficient indicia of reliability and the defendant does not present rebuttal evidence or otherwise demonstrate that

the information in the PSR is unreliable". *United States v. Trujillo*, 502 F.3d 353, 357 (5th Cir. 2007).

Because Arredondo at sentencing, did not present rebuttal evidence or otherwise show that the information in the PSR was unreliable, the district court could rely on it. Accordingly, Arredondo has not shown the requisite clear-or-obvious error in the court's application of the five-level enhancement under § 2G2.2(b)(7)(D). *E.g.*, *Puckett*, 556 U.S. at 135; *United States v. Zuniga*, 720 F.3d 587, 591 (5th Cir. 2013).

AFFIRMED.