

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 12, 2022

Lyle W. Cayce
Clerk

No. 20-40218
CONSOLIDATED WITH
No. 20-40346
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CHARLES WARREN CALLIS,

Defendant—Appellant.

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 2:19-CR-83-1
USDC No. 2:18-CR-1336-5

Before OWEN, *Chief Judge*, and DENNIS and HO, *Circuit Judges*.

PER CURIAM:*

Charles Warren Callis was charged with one count of possession with intent to distribute more than 500 grams of a mixture or substance containing

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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a detectable amount of cocaine (Count One), in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B), one count of possessing a firearm in furtherance of a drug trafficking crime (Count Two), in violation of 18 U.S.C. § 924(c)(1)(A), and one count of conspiring to possess with the intent to distribute a synthetic cannabinoid mixture and substance containing a detectable amount of 5F-MDMB-PINACA (Count Three), in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(C). Callis pleaded guilty to Counts One and Three but proceeded to trial and was found guilty on Count Two.

Callis does not challenge his guilty plea convictions and sentences for Counts One and Three. Accordingly, he has abandoned his appeal of those convictions and sentences. *See United States v. Still*, 102 F.3d 118, 122 n.7 (5th Cir. 1996). To the extent Callis challenges his conviction for possession of a firearm in furtherance of a drug trafficking crime, he fails to present any meaningful challenge to that conviction.

As Callis concedes, review is for plain error. *See United States v. Delgado*, 672 F.3d 320, 329 (5th Cir. 2012) (en banc). He fails to meet this standard, which requires, among other things, that the record be devoid of evidence of guilt. *Id.* at 331. First, Callis contends that the evidence was insufficient to support his conviction for possession of a firearm in furtherance of a drug trafficking crime, because his possession of the handgun was legal. The status of the possession, as either legitimate or illegal, is but one of a non-exhaustive list of factors that this court uses to help determine whether a firearm was possessed in furtherance of a drug trafficking crime. *United States v. Ceballos-Torres*, 218 F.3d 409, 414-15 (5th Cir. 2000), *as amended on denial of reh'g en banc*, 226 F.3d 651 (5th Cir. 2000). It is not dispositive, particularly given the ample evidence Callis possessed the firearm in furtherance of a drug trafficking offense, which the brief fails to address.

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Second, Callis argues that the evidence was insufficient to establish that he actively used or carried the firearm in furtherance of a drug trafficking crime. However, Callis was indicted for and convicted of *possessing* a firearm in furtherance of his crime, not the distinct offense of using or carrying a firearm during and in relation to a drug trafficking offense. Callis's argument relies on caselaw governing the definition of use that was superseded by an amendment to § 924(c)(1) expanding the offense to include possession. *See Welch v. United States*, --- U.S. ----, 136 S. Ct. 1257, 1267 (2016). Accordingly, the Government was not required to prove, and the jury was not required to find, that Callis used or carried the firearm. *See* 18 U.S.C. § 924(c)(1). In any case, our review of the record satisfies us that the evidence supports the conviction and there was no error, plain or otherwise.

Finally, we note that the brief demonstrates that appointed counsel has not fulfilled “[h]is role as advocate [which] requires that he support his client's appeal to the best of his ability.” *Anders v. California*, 386 U.S. 738, 744 (1967); FED. R. APP. P. 28(a)(8)(A). The claims that counsel does present are conclusory and lack sufficient support or advocacy. In particular, the brief addresses the elements of the wrong offense and relies on caselaw that has been superseded by statute. We have previously admonished counsel for deficient briefing. *In re Rodriguez*, 891 F.3d 576, 577 (5th Cir. 2018). Counsel is cautioned that future similar deficiencies could subject him to sanctions, including denial of payment of fees or disqualification from the Criminal Justice Act Panel.

AFFIRMED; SANCTION WARNING ISSUED.