United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 8, 2021
Lyle W. Cayce
Clerk

No. 20-50340
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

NICHOLAS WILLIAM HOWARD MONTOYA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:18-CR-2867-2

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges*.

PER CURIAM:*

Nicholas William Howard Montoya pleaded guilty, pursuant to a plea agreement, to conspiracy to import 500 grams or more of methamphetamine. The district court sentenced Montoya within the guidelines range to 63 months of imprisonment and five years of supervised release. Under his

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

agreement, Montoya waived his right to appeal or to collaterally attack his conviction and sentence on any ground except for constitutional claims of ineffective assistance of counsel or prosecutorial misconduct.

On appeal, Montoya contends that the district court failed to sua sponte conduct a hearing into his competency and that his attorney was ineffective for failing to raise the competency issue and to request a downward departure. The Government argues that the plea and waiver were effective, seeks to enforce the waiver on the competency claim, and asserts the record is inadequate for us to consider the ineffectiveness claims.

The conviction of a mentally incompetent defendant violates the Due Process Clause. *See Pate v. Robinson*, 383 U.S. 375, 378 (1966). A defendant has a procedural due process right to a hearing to determine his competence if the evidence before the district court raises a bona fide doubt about his competency. *See id.* at 385. Because Montoya made no objection with respect to his competency during the rearraignment hearing and did not seek to withdraw his plea in the district court, we review for plain error. *See United States v. Vonn*, 535 U.S. 55, 59 (2002).

At rearraignment, the magistrate judge concluded that Montoya was competent to enter his plea and appeal waiver after hearing that Montoya was competent and had never been treated for a mental health issue. Though the presentence report (PSR) later described that Montoya had previously been diagnosed with bipolar disorder, "[a] defendant can be both mentally ill and competent to stand trial." *Mays v. Stephens*, 757 F.3d 211, 216 (5th Cir. 2014). At sentencing, Montoya confirmed that diagnosis and indicated he was being treated with therapy and medication. But critically, throughout both hearings, Montoya provided lucid answers to the questions presented to him, and his general demeanor did not raise any bona fide doubt as to his competency. *See United States v. Davis*, 61 F.3d 291, 304 (5th Cir. 1995). On

these facts, Montoya has failed to show any error, plain or otherwise, in the district court's declining to sua sponte hold a competency hearing. *See Vonn*, 535 U.S. at 59; *see also United States v. Williams*, 816 F.2d 605, 607 (5th Cir. 1988) (describing the type of information which, when objectively considered, warrants a competency hearing). His plea and appeal waiver were knowing and voluntary. *See United States v. Portillo*, 18 F.3d 290, 292-93 (5th Cir. 1994).

Though Montoya's ineffectiveness claims fall within the exception to his appeal waiver, district courts are "best suited to developing the facts necessary" to assess such claims. *Massaro v. United States*, 538 U.S. 500, 505 (2003). Therefore, we generally will not consider the merits of such claims on direct appeal except for those "rare cases in which the record allows a reviewing court to fairly evaluate the merits of the claim." *United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014) (internal quotation marks and citation omitted). Otherwise, the preferred method for bringing such a claim is a 28 U.S.C. § 2255 motion. *See United States v. Bishop*, 629 F.3d 462, 469 (5th Cir. 2010).

The record is not sufficiently developed here to allow a fair evaluation of Montoya's ineffectiveness claims. We therefore decline to consider them, without prejudice to collateral review pursuant to 28 U.S.C. § 2255. *Isgar*, 739 F.3d at 841.

The judgment is AFFIRMED.