

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 7, 2022

Lyle W. Cayce
Clerk

No. 22-30065
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

NATHAN P. MCCALL,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:21-CR-100-1

Before JONES, BARKSDALE, and ELROD, *Circuit Judges.*

PER CURIAM:*

Nathan P. McCall challenges the sentence imposed following his guilty-plea conviction for possession of a firearm after a felony conviction. He contends the district court erred in applying a two-level “vulnerable victim” enhancement under Sentencing Guideline § 3A1.1(b)(1).

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Although post-*Booker*, the Guidelines are advisory only, the district court must avoid significant procedural error, such as improperly calculating the Guidelines range. *Gall v. United States*, 552 U.S. 38, 46, 51 (2007). If no such procedural error exists, a properly preserved objection to an ultimate sentence is reviewed for substantive reasonableness under an abuse-of-discretion standard. *Id.* at 51; *United States v. Delgado-Martinez*, 564 F.3d 750, 751–53 (5th Cir. 2009). In that respect, for issues preserved in district court, its application of the Guidelines is reviewed *de novo*; its factual findings, only for clear error. *E.g., United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008).

Even assuming the court procedurally erred in applying the enhancement, the Government met its burden of demonstrating any error was harmless by showing the court considered the overlapping Guidelines range without the enhancement and stated it would have imposed the same sentence in any event. *E.g., United States v. Guzman-Rendon*, 864 F.3d 409, 411 (5th Cir. 2017).

AFFIRMED.