

United States Court of Appeals for the Fifth Circuit

No. 22-40397
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 15, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

NANCY YVETTE GARCIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:21-CR-354-2

Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Nancy Yvette Garcia pleaded guilty to threatening to kidnap with intent to extort and injure another. The district court sentenced her to 188 months in prison. The district court applied a six-level sentencing enhancement for use of a firearm pursuant to U.S.S.G. 2B3.2(b)(3)(A)(ii).

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

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On appeal, Garcia argues that the facts were insufficient to show she used a gun during the commission of her crime.

The standard of review for the district court's factual findings during sentencing is clear error. *United States v. Landreneau*, 967 F.3d 443, 449 (5th Cir. 2020). "A factual finding is not clearly erroneous if it is plausible in light of the record read as a whole." *Id.*

First, Garcia does not dispute that her accomplice struck the victim with a gun, and that this would still warrant the six-point enhancement. *See United States v. Hammond*, 201 F.3d 346, 351 (5th Cir. 1999). Thus, she has abandoned any challenge to the district court's ruling on this ground. *See, e.g., Yohey v. Collins*, 985 F.2d 222, 224–25 (5th Cir. 1993).

Second, the Presentence Report relied on two FBI interviews with the victim who stated that Garcia pistol whipped him. While Garcia attacks the credibility and consistency of the victim's statements, she introduced no countervailing evidence nor are her arguments sufficient to demonstrate the PSR's unreliability. *See United States v. Zuniga*, 720 F.3d 587, 590–91 (5th Cir. 2013). Thus, she fails to show clear error in the district court's conclusion.

AFFIRMED.