

United States Court of Appeals for the Fifth Circuit

No. 22-50687
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 23, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RODNEY MACPHERSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:20-CR-134-1

Before BARKSDALE, GRAVES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Rodney MacPherson challenges his below-Guidelines 170-months' imprisonment imposed after his guilty-plea conviction for conspiracy to possess with intent to distribute at least 500 grams of a mixture or substance containing methamphetamine; in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A)(viii). He contends the court should not have attributed two

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

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kilograms of methamphetamine to him as relevant conduct because he did not participate in the trip to Houston, Texas, for the transaction.

Although post-*Booker*, the Sentencing Guidelines are advisory only, the district court must avoid significant procedural error, such as improperly calculating the Guidelines sentencing 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). “[T]he district court’s determination of what constitutes relevant conduct for purposes of sentencing is a factual finding that is reviewed for clear error”. *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir. 2019) (citation omitted).

The Guidelines provide that, when applied to “jointly undertaken criminal activity”, relevant conduct includes “all acts and omissions of others”: “(i) within the scope of the jointly undertaken criminal activity, (ii) in furtherance of that criminal activity, and (iii) reasonably foreseeable in connection with that criminal activity”. Guideline § 1B1.3(a)(1)(B) & cmt. n.3(A). “In a drug-trafficking case, relevant conduct may include all acts and omissions ‘that were part of the same course of conduct or common scheme or plan as the offense of conviction.’” *Barfield*, 941 F.3d at 762 (quoting Guideline § 1B1.3(a)(2)).

The district court did not clearly err in its challenged relevant-conduct finding. MacPherson was engaged in a jointly undertaken criminal activity with a co-conspirator who obtained the two kilograms of methamphetamine from Houston; the trip by the co-conspirator, which MacPherson did not

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take, was in furtherance of the criminal activity; and it was reasonably foreseeable to MacPherson in connection with the criminal activity. *See* Guideline § 1B1.3(a)(1)(B); *Barfield*, 941 F.3d at 761–63.

AFFIRMED.