

United States Court of Appeals for the Fifth Circuit

No. 23-30658
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 25, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MALIK QUENDELL NEWTON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:23-CR-15-1

Before ELROD, *Chief Judge*, and WILSON and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Malik Quendell Newton appeals the district court's order of forfeiture for three firearms and ammunition and his conditions of supervised release. He argues that the district court reversibly erred by ordering the forfeiture of the firearms and failing to pronounce conditions of supervision. Any error regarding the firearm forfeiture did not affect Newton's substantial rights,

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

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but the district court erred in failing to adequately pronounce Newton's supervised release conditions. Accordingly, we AFFIRM in part, VACATE in part, and remand for the district court to strike the unpronounced conditions from its judgment.

I

During the months of March, April, and May of 2022, investigators from the Sabine Parish Tactical Narcotics team and the Federal Bureau of Investigation investigated sales of methamphetamine by Newton in the Sabine Parish area. During the investigation, investigators conducted five controlled purchases of methamphetamine from Newton. On May 9, 2022, the investigators obtained an arrest warrant for Newton and a search warrant for Newton's residence.

The investigators observed Newton in a vehicle and executed the warrant. The investigators searched the vehicle and found a bottle of suspected promethazine, a loaded Smith & Wesson .32 caliber handgun loaded with six rounds, and a Taurus 9mm pistol with an extended magazine loaded with 21 rounds. The search warrant executed at Newton's residence yielded a CZ P-10 9mm pistol and a loaded CZ magazine containing ten 9mm rounds, a bottle of promethazine, and suspected methamphetamine.

Newton pleaded guilty to distribution of fifty grams or more of methamphetamine and was sentenced to 120 months of imprisonment and five years of supervised release. Although Newton's indictment included a forfeiture notice for "[a]ny property used or intended to be used in any manner or part to commit or facilitate the commission" of drug trafficking, the Government did not file a preliminary order of forfeiture before sentencing.

At sentencing, the district court asked about the forfeiture of the firearms. The court indicated a preference that the Government submit a

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preliminary order of forfeiture because, although the firearms were “specifically described” in the presentence report, the presentence report did not contain serial numbers. The court asked whether Newton’s counsel had any objection “to that procedure[,]” and Newton’s counsel replied that he did not.

The day after the sentencing hearing, the district court entered a final judgment on the docket. More than two weeks later, the Government filed a bill of particulars and a proposed preliminary order of forfeiture. Both documents listed three handguns matching the descriptions in the presentence report, their serial numbers, and “[a]ssorted ammunition.” The district court entered the preliminary order of forfeiture, which subsequently became final. *See* Fed. R. Crim. P. 32.2(b)(4)(A).

II

Newton presents two issues on appeal. First, he argues that the district court procedurally erred by failing to enter a preliminary order of forfeiture before sentencing in accordance with Federal Rule of Criminal Procedure 32.2. Second, he argues that the district court substantively erred by failing to pronounce conditions of supervised release.

A

Newton argues that the district court plainly erred in ordering forfeiture of his firearms in two ways: (1) by failing to enter a preliminary order of forfeiture prior to sentencing and failing to include the forfeiture order in the final judgment, and (2) by ordering the firearms forfeited where the Government did not show that the handguns described in the final forfeiture order facilitated his drug trafficking offense.

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1

We begin with Newton's procedural argument. "If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture[.]" Fed. R. Crim. P. 32.2(b)(2)(A). "Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant[.]" Fed. R. Crim. P. 32.2(b)(2)(B).

The preliminary order automatically becomes final at sentencing. Fed. R. Crim. P. 32.2(b)(4)(A). Accordingly, "[t]he court must include the forfeiture when orally announcing the sentence or must otherwise ensure that the defendant knows of the forfeiture at sentencing. The court must also include the forfeiture order, directly or by reference, in the judgment, but the court's failure to do so may be corrected at any time under Rule 36." Fed. R. Crim. P. 32.2(b)(4)(B).

Here, the district court failed to follow Rule 32.2's requirements. The record shows that the district court did not enter the preliminary order of forfeiture in advance of sentencing and did not include the forfeiture order in the judgment. However, Newton did not object to these failures when given the opportunity. Accordingly, we review for plain error.¹ *United States v. Marquez*, 685 F.3d 501, 509-10 (5th Cir. 2012).

¹ The Government argues that the standard for "invited error" applies because Newton's counsel responded "no objection" to the post-sentencing submission of the preliminary order of forfeiture. Statements of no objection generally do not amount to invited error. See *United States v. Lerma*, 877 F.3d 628, 632-33 (5th Cir. 2017) (citing *United States v. Rodebaugh*, 798 F.3d 1281, 1304 (10th Cir. 2015)). The invited error doctrine is therefore not applicable in the instant case.

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To prevail on plain error review, the appellant must prove: “(1) error, (2) that is plain, and (3) that affects his substantial rights.” *Id.* at 510 (quoting *United States v. Mason*, 668 F.3d 203, 208 (5th Cir. 2012)). If those three prongs are satisfied, the court proceeds to the fourth prong, which affords the appellate court “the discretion to remedy the error . . . only if the error ‘seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.’” *Puckett v. U.S.*, 556 U.S. 129, 135 (2009) (quoting *United States v. Olano*, 507 U.S. 725, 736 (1993)).

Generally, “an error affects a defendant’s substantial rights only if the error was prejudicial.” *Marquez*, 685 F.3d at 510 (quoting *United States v. Gonzalez-Rodriguez*, 621 F.3d 354, 363 (5th Cir. 2010)). “Error is prejudicial if there is a reasonable probability that the result of the proceedings would have been different but for the error.” *Id.* (quoting *Gonzalez-Rodriguez*, 621 F.3d at 363).

Newton is not entitled to relief under plain error analysis. Although the district court plainly erred by failing to adhere to Rule 32.2’s instructions, Newton failed to prove that that error affected his substantial rights. *See id.* Newton did not explain how the court’s error resulted in an incorrect forfeiture order or how the forfeiture order would have been different but for the procedural error. Accordingly, because Newton has failed to satisfy the third prong of plain error analysis, he is not entitled to relief. *Id.* at 510.

2

We turn next to Newton’s substantive argument. A defendant convicted of a drug offense punishable by more than one year of imprisonment must forfeit “any of the person’s property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation[.]” 21 U.S.C. § 853(a)(2). Where the Government seeks forfeiture of specific property, this court must determine “whether the

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government has established the requisite nexus between the property and the offense.” Fed. R. Crim P. 32.2(b)(1)(A); *see United States v. Ayika*, 837 F.3d 460, 469 (5th Cir. 2016). Newton argues that the Government did not show that the handguns described in the final forfeiture order facilitated his drug trafficking offense. Because he did not preserve this argument at the district court, we review for plain error. *See Marquez*, 685 F.3d at 509-10.

The district court did not err under prong one of plain error review. “A firearm is ‘automatically’ connected to drug trafficking if it is found in close proximity to drugs or drug paraphernalia.” *United States v. Choulat*, 75 F.4th 489, 492 (5th Cir. 2023) (citing *United States v. Jeffries*, 587 F.3d 690, 692 (5th Cir. 2009)). The CZ Pistol and magazine were found during a search of Newton’s residence that also revealed suspected drugs and drug paraphernalia. Newton sold a confidential source methamphetamine from that same residence during a controlled purchase days before the search. The firearms found in the car were loaded, within Newton’s reach, and found alongside a bottle of suspected promethazine. Accordingly, the district court did not err by finding that the Government established the requisite nexus between the firearms and the drug trafficking offense.

* * *

Newton fails to show that the district court plainly erred in issuing its forfeiture order. We therefore AFFIRM the district court’s forfeiture order.

B

Newton next argues that the district court erred by not orally pronouncing eleven of the thirteen “standard” supervised release conditions in the written judgment. The proper standard of review depends on whether Newton had an opportunity to object in the district court to the conditions that appear in the written judgment. *See United States v. Diggles*, 957 F.3d

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551, 559-60 (5th Cir. 2020) (en banc). This court reviews for plain error if Newton could have raised his argument in the district court but did not, *see id.*, and for abuse of discretion if he had no such opportunity, *see United States v. Martinez*, 47 F.4th 364, 366 (5th Cir. 2022).

Diggles gave clear guidance as to the procedures that district courts must follow when pronouncing discretionary conditions by reference. District courts must follow two steps. First, the district court must ensure “that the defendant had an opportunity to review [the presentence report or standing order] with counsel.” *Diggles*, 957 F.3d at 561 n.5. This is required in *all* sentencings, whether or not a district court wishes to impose conditions by reference. *See* Fed. R. Crim. P. 32(i)(1)(A). Second, the district court “must orally adopt the written recommendations when the defendant is in court.” *Diggles*, 957 F.3d at 561 n.5. Under *Diggles*, the “mere existence of [the PSR or standing order] is not enough for pronouncement.” *Id.*

Here, the district court did not comply with the first requirement as it never confirmed that Newton had reviewed the PSR with his counsel. We held in *United States v. Lezama-Ramirez* that a district court may infer from the record that the defendant had reviewed the PSR with his counsel, even if not verbally confirmed at sentencing as is required by Federal Rule of Criminal Procedure 32(i)(1)(A). 173 F.4th 191, 194–95 (5th Cir. 2026). But the Government must still point to specific facts in the record that show that the defendant himself—not just his counsel—reviewed the PSR. In *United States v. Esparza-Gonzalez*, we found the record insufficient to establish that the defendant had reviewed the PSR when the record indicated only that:

(1) both defendants were advised that the probation office was going to prepare a presentence report; (2) both defendants were advised that defense counsel would have the opportunity to review the report with them; and (3) neither defendant informed the court that he had not had the opportunity to

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review the PSR when given the opportunity to speak at the sentencing hearings.

268 F.3d 272, 274 (5th Cir. 2001). We held that the “record [was] clearly adequate to support the inference that defense counsel had the opportunity to review the PSR, but none of these facts justifies that same inference with regard to [the defendants].” *Id.* In contrast, *Lezama-Ramirez* held that the record reflected that the defendant had reviewed the PSR with his counsel because in his allocution, the defendant specifically referenced supervised release conditions that may be imposed. 173 F.4th at 194–95.

Here, the Government does not point to any facts supporting an inference that Newton reviewed the PSR with his counsel. Although the record reflects that Newton’s counsel reviewed the PSR, it does not reflect that Newton himself did. Because the district court did not confirm that Newton had personally reviewed the PSR, it could not orally pronounce conditions by referencing the PSR.

III

We VACATE standard conditions 2–9 and 11–13 in the written judgment of conviction and REMAND for the district court to excise the vacated conditions from its judgment. We AFFIRM the district court in all other respects.