

United States Court of Appeals
for the Fifth Circuit

No. 23-50059
CONSOLIDATED WITH
No. 23-50063
SUMMARY CALENDAR

United States Court of Appeals
Fifth Circuit
FILED
November 14, 2023
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JONATHAN JESUS ANGULO-CHORA,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 1:19-CR-124-1, 1:21-CR-157-1

Before SMITH, HO, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Jonathan Jesus Angulo-Chora appeals his 160-month sentence, which was below the guidelines range, following his guilty plea to possession with intent to distribute methamphetamine. He also appeals his 24-month sentence imposed following the revocation of his supervised release, which

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

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was below the policy statement range and was the statutory maximum sentence that he could receive.

Angulo-Chora argues that the magistrate judge's cumulative errors in failing to comply with Federal Rule of Criminal Procedure 11 materially affected the voluntariness of his guilty plea to the new drug offense and that the errors were not harmless. Because Angulo-Chora did not object to the alleged Rule 11 errors in the district court, we review for plain error. *See United States v. Vonn*, 535 U.S. 55, 58-59 (2002). To establish plain error, Angulo-Chora must show a forfeited error that is clear or obvious and that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes this showing, we have the discretion to remedy the error but will do so only if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks, brackets, and citation omitted).

Contrary to Angulo-Chora's assertions, the magistrate judge deviated only slightly from Rule 11(b)(1)'s language requiring specified admonishments and from Rule 11(c)(3)(B)'s language requiring specific advice about his right to withdraw his guilty plea. Accordingly, Angulo-Chora has not shown Rule 11 error, plain or otherwise. *See United States v. King*, 979 F.3d 1075, 1079-80 (5th Cir. 2020).

Angulo-Chora also challenges the procedural reasonableness of the sentence for his new drug offense. He argues that the district court failed to confirm that he read and discussed with counsel the presentence report (PSR) and the addendum to the PSR and that the district court's oral pronouncement conflicted with the written judgment as to the items ordered forfeited. Angulo-Chora's challenge to the procedural reasonableness of his drug conviction sentence, however, was waived by his voluntary guilty plea waiver. *See United States v. Higgins*, 739 F.3d 733, 737-39 (5th Cir. 2014);

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United States v. Bond, 414 F.3d 542, 544 (5th Cir. 2005); *United States v. McKinney*, 406 F.3d 744, 746 & n.2 (5th Cir. 2005).

Angulo-Chora argues that his revocation sentence is procedurally unreasonable because the district court deprived him of the opportunity to allocute prior to imposing it. As Angulo-Chora acknowledges, because he did not object in the district court, review is for plain error. *See Puckett*, 556 U.S. at 135; *United States v. Mims*, 992 F.3d 406, 409 (5th Cir. 2021).

Even if there was clear or obvious error, a question we do not reach, Angulo-Chora has not shown that the alleged error affected his substantial rights. *See Puckett*, 556 U.S. at 133; *United States v. Montoya*, 861 F.3d 600, 604 (5th Cir. 2017). To show the violation of substantial rights, Angulo-Chora must show that the court's plain error in denying him the right to allocate as to his revocation sentence "caused him prejudice." *Puckett*, 556 U.S. at 133.

Angulo-Chora's argument that we should presume the alleged error prejudiced him because he was sentenced to the statutory maximum sentence is unavailing. Angulo-Chora has ignored that the district court sought to sentence him at the bottom of the policy statement range but could not because Angulo-Chora was subject to a lower, 24-month statutory maximum sentence. *United States v. Reyna*, 358 F.3d 344, 351-52 (5th Cir. 2004) (en banc). Further, there were no disputed facts surrounding the revocation sentence, which, if resolved, would have reduced the applicable policy statement range or Angulo-Chora's ultimate sentence. *See Reyna*, 358 F.3d at 351-52. Nor does the record reflect that Angulo-Chora advanced any argument for a lower revocation sentence. *See Montoya*, 861 F.3d at 604-05. He thus fails to show prejudice. *See Puckett*, 556 U.S. at 133; *Montoya*, 861 F.3d at 604-05.

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Last, Angulo-Chora, relying on cases outside of this circuit, argues that the probation officer exceeded the statutory limits of the office by petitioning the court to revoke Angulo-Chora's supervised release. Because Angulo-Chora did not object in the district court, we review for plain error. *See Puckett*, 556 U.S. at 135. Given the absence of caselaw unequivocally supporting his position, Angulo-Chora fails to demonstrate clear or obvious error with respect to the district court's revocation of his supervised release. *See Puckett*, 556 U.S. at 135; *United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015); *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009).

AFFIRMED.