United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 2, 2026
Thomas B. Plunkett, III
Clerk

No. 25-30623

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

THOMAS DEW,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:22-CR-21-1

Before RICHMAN, HAYNES, and DOUGLAS, *Circuit Judges*.

PER CURIAM:[*]

Thomas Dew was convicted of conspiring to possess with the intent to distribute methamphetamine and now challenges his life sentence. For the first time on appeal, he asserts that the Government breached his plea agreement. Then, he says that the district court erred when calculating the applicable drug quantity and imposed a substantively unreasonable sentence. We disagree on each point and, accordingly, affirm.

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

I. Background

Thomas Dew was involved in a methamphetamine distribution conspiracy, which took place primarily in Sabine Parish, Louisiana. Using confidential informants, law enforcement initiated controlled buys from Dew on multiple occasions. The investigation led to Dew being charged, along with six others, in a multi-count indictment. The indictment named Dew in three counts—one of which was conspiracy to possess with the intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. Dew later entered plea negotiations with the Government.

Dew signed a written plea agreement. He agreed to plead guilty to the § 841(a)(1) offense, and in return, the Government agreed to dismiss the other two counts, not prosecute him for other offenses based on the investigation, and move for a one-point reduction in his offense level for acceptance of responsibility. Among other things, the plea agreement also contained a limited appeal waiver, stated that the district court would decide what sentence to impose, and confirmed that it contained the complete agreement between the parties.

The parties also agreed to the factual basis supporting the plea agreement. The factual basis discussed some of the controlled buys and explained that through, "controlled buys and search warrants," law enforcement "seized methamphetamine from" Dew and his six co-conspirators in various amounts. Among those amounts, the factual basis first listed "Thomas Dew—440 grams of methamphetamine" and went on to list other amounts for the co-conspirators.

Dew appeared before the district court and pleaded guilty under the plea agreement's terms. During the hearing, the district court inquired as to the drug quantities at issue, specifically the "440 grams" next to Dew's

name. The Government explained: "The 440 grams is the total that was actually seized." The district court then responded: "It shows that it was seized from him." During the discussion, the Government clarified that there were other amounts "not included in the factual basis that would come up at sentencing." It further stated that "Probation would know about it" and explained that part of demonstrating this at sentencing would involve "two of the co-defendants talking about how much was moved over that time." Thereafter, the district court noted that the count Dew was pleading guilty to carried a mandatory minimum sentence of ten years and a possibility of life imprisonment. The district court then accepted Dew's guilty plea and ordered that a presentence investigation report ("PSR") be completed.

The PSR calculated Dew's Sentencing Guidelines range, leading to a recommendation of life in prison. This was based on a total offense level of 43 and a criminal history category of V.[1] As for the total offense level, the PSR started with a base offense level of 38. This was based on U.S.S.G. § 2D1.1(c)(1), which governs drug trafficking offenses, and the PSR's conclusion that Dew bought and sold at least 10.88 kilograms of methamphetamine during the conspiracy.[2] Dew, however, objected to the PSR's drug quantity calculation, arguing that only 440 grams should be considered.

At sentencing, the district court began by considering Dew's objection to the drug quantity. On this point, the Government presented testimony

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[1] Dew's criminal history category was calculated based on his prior conduct and the fact that he committed this offense while serving another sentence.

[2] Dew's offense level was then increased because he: (1) possessed a firearm, U.S.S.G. § 2D1.1(b)(1); (2) maintained a premises for the purpose of drug distribution, U.S.S.G. § 2D1.1(b)(12); and (3) functioned as an organizer or leader of the conspiracy, U.S.S.G. § 3B1.1(a). It was then decreased three levels because he accepted responsibility. U.S.S.G. § 3E1.1.

from two co-conspirators and an agent from the Federal Bureau of Investigation. Dew's counsel cross-examined each witness, and the district court thereafter heard the parties' arguments. The district court nonetheless overruled Dew's objection. The district court next heard Dew's allocution statement, wherein he apologized for his actions. But after acknowledging that the Sentencing Guidelines range was correctly calculated, the district court explained that it intended to sentence Dew via a variance, relying on the factors set out in 18 U.S.C. § 3553(a). The district court, though, explained that it would reach the same conclusion whether it sentenced Dew under a variance or the Sentencing Guidelines range. That is, after discussing these factors, the district court sentenced Dew to life in prison. Dew timely appealed.

II. Jurisdiction

The district court had jurisdiction under 18 U.S.C. § 3231. We have appellate jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

III. Discussion

Dew presents three issues on appeal. He contends that: (A) the Government breached the plea agreement; (B) the district court erred when determining what drug quantity Dew was responsible for; and (C) his life sentence is substantively unreasonable. We disagree on each point.

A. Plea Agreement

Dew argues, for the first time on appeal, that the Government breached the plea agreement. He says that the Government agreed during his plea hearing that 440 grams of methamphetamine constituted the total quantity involved in the conspiracy and later "abandoned" that agreement at sentencing. But that is not the case.

We review for plain error because Dew failed to raise this challenge below. *United States v. Cluff*, 857 F.3d 292, 297 (5th Cir. 2017). For Dew to prevail on plain-error review, he must show that there was an error "that has not been intentionally relinquished or abandoned," that error is "clear or obvious, rather than subject to reasonable dispute," and it affected his "substantial rights." *Puckett v. United States*, 556 U.S. 129, 135 (2009). Even then, we have discretion to remedy the error. *Id.*

We begin by deciding whether there was a clear or obvious error. This requires us to determine what the parties agreed to.

We apply general principles of contract law when interpreting a plea agreement. *United States v. Elashyi*, 554 F.3d 480, 501 (5th Cir. 2008). The plea agreement unambiguously contains no term obligating the Government, in any way, with respect to the total amount of drugs involved in the conspiracy. The plea agreement did not require the Government to agree that the conspiracy involved a certain drug quantity, make a particular recommendation at sentencing, or refrain from presenting evidence as to additional drug quantities based on relevant conduct. Various drug quantities are discussed in the plea agreement's factual basis. But this is just an explanation of the amounts "agents seized" from Dew and the other co-conspirators. It does not attempt to quantify the total amount of methamphetamine involved in the conspiracy. What is more, the plea agreement clarifies that: it contains the parties' complete agreement; a final determination of the Sentencing Guidelines range could not be made until the PSR was completed; and the district court would decide what sentence to impose. Dew has failed to point to a provision that the Government breached or that is ambiguous. *See United States v. Hinojosa*, 749 F.3d 407, 413 (5th Cir. 2014) (concluding that the Government did not breach where the agreement's language "contain[ed] neither a reference to drug quantity nor a promise not to advocate for the inclusion of relevant conduct").

Basically, the complete agreement and discussion did not include an understanding that 440 grams of methamphetamine constituted the total amount of drugs involved in the conspiracy.[3]

* * *

Dew has failed to demonstrate a clear or obvious error.

B. Drug Quantity

Dew next argues that the district court erred when attributing 10.88 kilograms of methamphetamine to him.[4] Specifically, he argues that the district court erred when relying on testimony from his co-conspirators. This, though, was not error.

We review a district court's factual findings, such as the calculation of a drug quantity, for clear error. *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir. 2019). Such a finding "is not clearly erroneous as long as it is plausible in light of the record as a whole." *United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005) (citation modified).

When convicted of a drug offense, a defendant's sentence is based, in part, on the quantity of the drugs involved. U.S.S.G. § 2D1.1(c). Due to relevant conduct, "quantities of drugs not specified in the count of conviction may be considered in determining the offense level." U.S.S.G.

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[3] Dew's focus on the Government's statement agreeing with the district court that the conspiracy involved a total of 440 grams of methamphetamine does not alter the analysis because he cannot show that such a promise was incorporated into the plea agreement, nor can he demonstrate that the Government clearly agreed to a cap on the drug quantity.

[4] At the outset, we note that Dew does not appear to contest the PSR's calculation that law enforcement seized (through controlled buys and traffic stops) 1.9 kilograms of methamphetamine and that amount is attributable to the conspiracy. Dew takes issue only with the jump to 10.88 kilograms.

§ 2D1.1 cmt. n.5 (citing U.S.S.G. § 1B1.3(a)(2)). Indeed, district courts may consider drug-quantity estimates, *United States v. Barry*, 978 F.3d 214, 218 (5th Cir. 2020), and further, where "the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance," *id.* at 217 (quoting U.S.S.G. § 2D1.1 cmt. n.5). When making factual findings, "the district court may consider any information which bears sufficient indicia of reliability to support its probable accuracy" and, accordingly, "may adopt facts contained in a PSR without inquiry, if those facts had an adequate evidentiary basis and the defendant does not present rebuttal evidence." *United States v. Kearby*, 943 F.3d 969, 974 (5th Cir. 2019) (citation modified).

The district court's drug-quantity calculation was not clearly erroneous. Dew says that his co-conspirators' testimony was not reliable because the "estimate of one to two pounds a week" provides "no way to test how the witnesses arrived at it" and exceeds the documented transactions. But that is incorrect. Rather, this testimony provided ample basis to find that Dew was responsible for 10.88 kilograms of methamphetamine. We have acknowledged that district courts may "consider the statements of coconspirators . . . —even statements that are somewhat imprecise—in calculating drug quantity." *Id.* (citation modified); *see also United States v. Rico*, 864 F.3d 381, 386 (5th Cir. 2017) ("Statements by coconspirators are sufficiently reliable to form the basis of a finding."). Dew's co-conspirators' testimony was consistent and established that he was responsible for distributing one to two pounds of methamphetamine per week. Then what is more, the Government called to the stand an FBI agent who explained that this quantity was consistent with the overall investigation. Dew failed to demonstrate that this testimony was unreliable. He did not provide rebuttal evidence or refute this testimony. *See United States v. Arayatanon*, 980 F.3d 444, 451 (5th Cir. 2020) (concluding that the PSR was

"sufficiently reliable even if based on a coconspirator's imprecise testimony, especially absent any competent rebuttal evidence" (citation modified)).

* * *

Dew has failed to demonstrate that this testimony was unreliable such that it cannot support the district court's drug-quantity finding.

C. Substantive Reasonableness

Dew last argues that the district court's imposition of a life sentence was substantively unreasonable. We disagree.[5]

"We review the substantive reasonableness of the sentence for an abuse of discretion." *United States v. Sifuentes*, 945 F.3d 865, 868 (5th Cir. 2019). Our "review is highly deferential, because the sentencing court is in a better position to find facts and judge their import under the § 3553(a) factors." *United States v. Hernandez*, 876 F.3d 161, 166 (5th Cir. 2017) (per curiam) (citation modified). A sentence within the Sentencing Guidelines range—here, life in prison—is presumptively reasonable. *Id.*

The district court did not abuse its discretion when imposing a (properly calculated) life sentence. The district court heard and considered defense counsel's arguments, Dew's allocution statement, and the Government's counter arguments. Then, the district court further emphasized the § 3553(a) factors, explaining that it intended to sentence Dew under a variance because these factors were "tailor-made for [Dew's] situation." In the district court's view, a life sentence was appropriate

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[5] Because we conclude that the district court did not commit reversible error, we pretermit consideration of the applicability of Dew's appeal waiver. *United States v. Borino*, 123 F.4th 233, 239 n.1 (5th Cir. 2024) (noting that appeal waivers are not jurisdictional and collecting cases that assumed without deciding that claims are not barred by an appeal waiver).

whether it was within the Sentencing Guidelines range or not. The district court had the factors in full view, and it focused on the nature and circumstances of the offense, Dew's history and characteristics, the seriousness of the offense, deterrence, and protection of the public. 18 U.S.C. § 3553(a)(1), (a)(2)(A), (a)(2)(B), and (a)(2)(C). The district court also acknowledged the sentencing disparity that would ensue between Dew and his co-conspirators. But it explained that the disparity was warranted because Dew "distinguished" himself by, among other things, the "size of [the] concerted activity" and his use of a child to assist in drug distribution. Accordingly, Dew cannot explain how the district court failed to adequately account for his history and personal characteristics and sentencing disparities. Then, contrary to his assertion, the district court did not give significant weight to Dew's post-plea conduct. Nor did the district court's sentence reflect a clear error of judgment. Instead, Dew's assertions amount to a "disagreement with the propriety of the sentence imposed," which "does not suffice to rebut the presumption of reasonableness that attaches to a within-guidelines sentence." *United States v. Ruiz*, 621 F.3d 390, 398 (5th Cir. 2010) (per curiam).

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The district court did not abuse its discretion when imposing Dew's life sentence.

IV. Conclusion

We AFFIRM.