

Appendix A

United States v. Salazar

United States Court of Appeals for the Fifth Circuit

May 24, 2019, Filed

No. 18-10652 Summary Calendar

Reporter

770 Fed. Appx. 697 *; 2019 U.S. App. LEXIS 15601 **; 2019 WL 2251554

UNITED STATES OF AMERICA, Plaintiff-Appellee v.
ALEXANDER LEE SALAZAR, Defendant-Appellant

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: **[**1]** Appeal from the United States District Court for the Northern District of Texas. USDC No. 4:17-CR-265-1.

United States v. Salazar, 2017 U.S. Dist. LEXIS 218639 (N.D. Tex., Dec. 19, 2017)

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Leigha Amy Simonton, Assistant U.S. Attorney, James Wesley Hendrix, Assistant U.S. Attorney, U.S. Attorney's Office, Dallas, TX.

For ALEXANDER LEE SALAZAR, Defendant - Appellant: Brandon Elliott Beck, Federal Public Defender's Office, Lubbock, TX.

Judges: Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

Opinion

[*697] PER CURIAM:*

Alexander Lee Salazar appeals his 220-month sentence imposed following his guilty plea to possession with intent to distribute a controlled substance. Salazar argues that the district court clearly erred in failing to reduce his offense level for a mitigating role in the criminal activity. "Whether [a defendant] was a minor or minimal participant" under *U.S.S.G. § 3B1.2* "is a factual determination that [this court]

review[s] for clear error." *United States v. Gomez-Valle*, 828 F.3d 324, 327 (5th Cir. 2016) (internal quotation marks and citation omitted). "A factual finding is not clearly erroneous if it is plausible in light of the record read as a whole." *Id.* (internal quotation marks and citation omitted). The defendant has the burden of demonstrating his entitlement to a minor or minimal role adjustment. **[**2]** *United States v. Castro*, 843 F.3d 608, 612 (5th Cir. 2016).

The evidence in the record reflects that Salazar admitted that on four occasions he illegally transported significant amounts of methamphetamine into different areas of the United States for distribution. The evidence also showed that he intended to continue to engage in the activity and that he would be obtaining methamphetamine from the initial source of the drugs. While Salazar may not have been an organizer or a decisionmaker with respect to the criminal activity, based on the totality of the circumstances, the district court's determination that Salazar failed to demonstrate that he was entitled to a reduction of his offense level for a mitigating role was plausible and did not constitute clear error. *See U.S.S.G. § 3B1.2, comment. (n.3(C)); United States v. Bello-Sanchez*, 872 F.3d 260, 264-65 (5th Cir. 2017); *Gomez-Valle*, 828 F.3d at 327.

Next, Salazar argues that the district court clearly erred in failing to reduce his offense level for the acceptance of responsibility. He contends that he pleaded guilty in a timely manner, he did not falsely deny relevant conduct, and he provided compelling **[*698]** explanations for most of his violations of his pretrial release.

The district court's decision to deny a reduction for acceptance of responsibility will be affirmed "unless it is without foundation, **[**3]** a standard of review more deferential than the clearly erroneous standard." *United States v. Juarez-Duarte*, 513 F.3d 204, 211 (5th Cir. 2008) (internal quotation marks and citation omitted). While entering a guilty plea and truthfully admitting criminal conduct "constitute significant evidence of acceptance of responsibility," such "evidence may be outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility." *U.S.S.G. § 3E1.1, comment. (n.3)*. "The district court may properly deny a reduction for acceptance of responsibility for

* Pursuant to *5TH CIR. R. 47.5*, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in *5TH CIR. R. 47.5.4*.

failure to refrain from criminal conduct while on pretrial release." United States v. Rickett, 89 F.3d 224, 227 (5th Cir. 1996).

Salazar tested positive for the use of methamphetamine in violation of the conditions of his pretrial release. The district court's decision to deny Salazar a reduction of his offense level for the acceptance of responsibility was not without foundation and was not clear error. See Juarez-Duarte, 513 F.3d at 211. Salazar's sentence is AFFIRMED.

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Appendix B

United States District CourtNorthern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA §

v. §

ALEXANDER LEE SALAZAR §

Case Number: 4:17-CR-00265-A(01)

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Shawn Smith. The defendant, ALEXANDER LEE SALAZAR, was represented by Federal Public Defender through Assistant Federal Public Defender Taylor Wills Edwards Brown.

The defendant pleaded guilty on December 19, 2017 to the one count information filed on December 13, 2017. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

Title & Section / Nature of Offense21 U.S.C. §§ 841(a)(1) & (b)(1)(C) Possession with Intent to Distribute a
Controlled Substance**Date Offense Concluded**

10/18/2017

Count

1

As pronounced and imposed on May 18, 2018, the defendant is sentenced as provided in the judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 220 months.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered at a rate of at least \$25 per month.
6. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$25 per month.
7. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.

6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 18th day of May, 2018.



JOHN McBRIDE
UNITED STATES DISTRICT JUDGE