

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

REFUGIO QUINTANAR,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

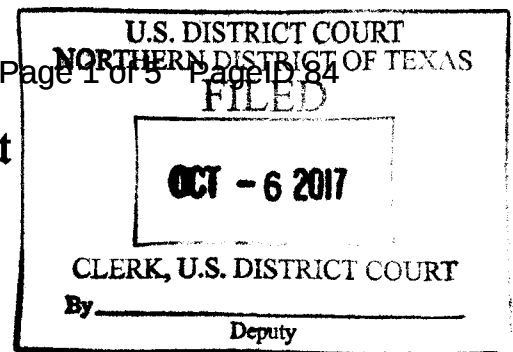
APPENDIX

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APPENDIX A

United States District CourtNorthern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA §

v. §

REFUGIO QUINTANAR §

Case Number: 4:17-CR-085-A(01)

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Frank L. Gatto. The defendant, REFUGIO QUINTANAR, was represented by Federal Public Defender through Assistant Federal Public Defender Leandro Delgado.

The defendant pleaded guilty on June 23, 2017 to the one count indictment filed on May 17, 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 Offense

18 U.S.C. § 922(g)(1) Felon in Possession of Ammunition

Date Offense Concluded

March 23, 2017

Count

1

As pronounced and imposed on October 6, 2017, the defendant is sentenced as provided in this 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 96 months. This sentence shall run consecutively to any sentences imposed in Case Nos. 1477460D and 1491909 in Tarrant County Criminal Court No. 3, and Case No. 1491907 in Tarrant County Criminal Court No. 6.

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 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 \$20 per month.
5. 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.
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 \$20 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 6th day of October, 2017.



JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2017 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal

APPENDIX B

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-11244

United States Court of Appeals
Fifth Circuit

FILED

June 13, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

REFUGIO QUINTANAR,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-85-1

Before HAYNES, GRAVES, and DUNCAN, Circuit Judges

PER CURIAM:*

Refugio Quintanar appeals his above-Guidelines sentence. Quintanar pleaded guilty to being a felon in possession of ammunition. In the presentence report (“PSR”), the probation officer suggested that an upward departure from the guidelines range might be warranted under U.S.S.G. § 4A1.3 based on Quintanar’s extensive criminal history. Quintanar objected to this suggestion. At sentencing, the district court recounted Quintanar’s criminal history, which

* 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.

included four juvenile adjudications, three unadjudicated juvenile incidents,¹ eight adult convictions, five adult charges that were not prosecuted, and three pending criminal charges. The district court also mentioned Quintanar's Texas Youth Commission ("TYC") records, which included 280 incident reports spanning 559 pages. As to the three unadjudicated juvenile incidents, the district court found by a preponderance of the evidence that Quintanar had "engaged in the inappropriate conduct" described in the PSR. Quintanar objected to the district court's preponderance-of-the-evidence findings, arguing the findings violated his Fifth and Sixth Amendment rights. The district court overruled the objection, and, based on Quintanar's extensive criminal history, sentenced him to ninety-six months of imprisonment and three years of supervised release.

On appeal, Quintanar argues that the district court erred by basing the upward variance on his TYC records and two unadjudicated juvenile assault incidents because this information did not have sufficient indicia of reliability.² We conclude that the district court did not reversibly err and AFFIRM.

¹ The three unadjudicated juvenile incidents consisted of the following: (1) when Quintanar was eleven the Fort Worth Police Department (or "FWPD") located Quintanar with black paint on his hand and a marker in his pocket two blocks from where a resident had called to complain that a Hispanic boy had spray-painted on his house; (2) when Quintanar was twelve, the FWPD responded to a domestic disturbance call from his mother when he hit her after they argued; and (3) when Quintanar was thirteen, the FWPD responded to a domestic disturbance call from Quintanar's mother's boyfriend after Quintanar hit the boyfriend with a shoe and then a metal chair support rod.

² Quintanar also raises two foreclosed issues on appeal solely to preserve them for further review. He first argues that the district court violated his Sixth Amendment right to confrontation by failing to permit him to cross-examine at the sentencing hearing the out-of-court declarants who accused him of the unadjudicated offenses referenced in the PSR. He correctly concedes that this issue is foreclosed as recognized in *United States v. Mitchell*, 484 F.3d 762, 776 (5th Cir. 2007). Next, he contends that the district court erred by applying U.S.S.G. § 2K2.1(a)(4) to increase his base offense level because he had a prior conviction for a crime of violence, as defined in U.S.S.G. § 4B1.2(a). He asserts that his prior conviction for Texas robbery does not qualify as a crime of violence, but he correctly concedes that this argument is foreclosed by our holding concerning the generic enumerated offense of robbery as set forth in *United States v. Santiesteban-Hernandez*, 469 F.3d 376, 380–81 (5th Cir. 2006),

I. TYC Records

Quintanar argues that the incident reports in the TYC records are the equivalent of bare arrest records, on which a district court may not rely at sentencing. *See United States v. Windless*, 719 F.3d 415, 420 (5th Cir. 2013). Because Quintanar specifically objected only to the district court’s preponderance-of-the-evidence findings, we review his challenge to the district court’s consideration of the TYC records for plain error. *See United States v. Chavez-Hernandez*, 671 F.3d 494, 497 (5th Cir. 2012). Under that standard, Quintanar must show “(1) an error (2) that was clear or obvious (3) that affected his substantial rights.” *United States v. Avalos-Martinez*, 700 F.3d 148, 153 (5th Cir. 2012) (per curiam). If he does, “we have the discretion to correct the error if it ‘seriously affects the fairness, integrity or public reputation of judicial proceedings.’” *Id.* (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

Due to the lack of binding authority that puts Quintanar’s argument beyond reasonable debate, he cannot show that any error was clear or obvious. *See United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015); *United States v. Ellis*, 564 F.3d 370, 377–78 (5th Cir. 2009). Moreover, even if the district court did commit clear or obvious error by relying on the incident reports in the TYC records, Quintanar cannot show that the error affected his substantial rights; the district court primarily relied on “other significant, permissible factors,” such as his four adjudicated juvenile assaults and eight adult convictions, when determining that an upward variance was appropriate. *See United States v. Rodriguez-Rodriguez*, 775 F.3d 706, 714 (5th Cir. 2015)

overruled on other grounds by United States v. Rodriguez, 711 F.3d 541, 547–63 (5th Cir. 2013).

(quoting *United States v. Williams*, 620 F.3d 483, 495 (5th Cir. 2010)). Thus, the district court did not commit plain error.

II. Unadjudicated Juvenile Incidents

The information underlying Quintanar’s unadjudicated juvenile assault incidents was based on offense reports from the Fort Worth Police Department. Quintanar argues that the information lacked sufficient indicia of reliability because the complainants’ accounts were not corroborated and because police officers are generally motivated to create actionable cases.

We review criminal sentences for reasonableness using an abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). In making that determination, we review the district court’s application of the Sentencing Guidelines de novo and its factual findings for clear error. *United States v. Hinojosa*, 749 F.3d 407, 411 (5th Cir. 2014). Facts used to determine a sentence must be supported “by a preponderance of the relevant and sufficiently reliable evidence.” *United States v. Alaniz*, 726 F.3d 586, 619 (5th Cir. 2013) (quoting *United States v. Betancourt*, 422 F.3d 240, 247 (5th Cir. 2005)).

“Generally, a PSR ‘bears sufficient indicia of reliability to be considered as evidence by the sentencing judge in making factual determinations.’” *United States v. Fuentes*, 775 F.3d 213, 220 (5th Cir. 2014) (per curiam) (quoting *United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012)). Information from police reports may be sufficiently reliable. *Id.* Further, a district court may consider hearsay when making its determinations. *United States v. Nava*, 624 F.3d 226, 231 (5th Cir. 2010). “The defendant bears the burden of presenting rebuttal evidence to demonstrate that the information in the PSR is inaccurate or materially untrue.” *United States v. Cervantes*, 706 F.3d 603, 620–21 (5th Cir. 2013) (brackets omitted) (quoting *United States v. Scher*, 601 F.3d 408, 413 (5th Cir. 2010) (per curiam)).

Here, the information in the PSR was drawn from Fort Worth Police Department offense reports and included detailed information about the alleged assaults. The offense reports described each complainant's account of the assault as well as what the officers viewed upon arriving at the scene. Although Quintanar objected to the district court's findings as a violation of his Fifth and Sixth Amendment rights, he did not claim the facts were inaccurate nor did he provide any rebuttal evidence to demonstrate the information in the PSR was unreliable. Thus, the district court did not err.

The district court's judgment is AFFIRMED.