

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROY RAMIREZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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782 Fed.Appx. 521 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1, generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 8th Cir. Rule 32.1A.

United States Court of Appeals, Eighth Circuit.

UNITED STATES of America Plaintiff - Appellee

v.

Roy RAMIREZ

Defendant - Appellant

United States of America Plaintiff - Appellee

v.

Roy Ramirez Defendant - Appellant

No. 18-3598, No. 18-3599

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Submitted: September 23, 2019

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Filed: November 1, 2019

Appeals from United States District Court for the Western District of Arkansas - Fayetteville

Attorneys and Law Firms

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Roy Ramirez, Pro Se

Before KELLY, MELLOY, and STRAS, Circuit Judges.

[Unpublished]

PER CURIAM.

After being discovered in possession of an assault rifle loaded with a large-capacity magazine, Defendant Roy Ramirez pleaded guilty to being a felon in possession of a firearm. 18 U.S.C. § 922(g)(1). He committed the offense while on supervised release from an earlier firearm conviction. He admitted that the most recent firearm possession also violated the terms of his supervised release, and he admitted to committing four other supervised release violations.

At Ramirez's request, the district court¹ held back-to-back hearings to address his new sentence and his revocation of supervised release. The district court imposed a new sentence of 71 months' imprisonment and a consecutive 8-month revocation sentence. The new sentence was at the top of the applicable Guidelines range based, in part, on a determination that a prior federal *522 conviction for conspiring to possess marijuana with intent to distribute qualified as a predicate conviction for a "controlled substance offense" pursuant to U.S.S.G. § 2K2.1(a)(3). Ramirez appeals, arguing the district court committed plain procedural

error in its § 2K2.1(a)(3) determination. He also argues the district court abused its discretion in ordering the revocation sentence to run consecutively to the new sentence.

The district court did not err in its application of § 2K2.1(a)(3). The commentary to that section defines “controlled substance offense” by means of a reference to definitions provided in the career-offender guidelines. U.S.S.G. § 2K2.1 cmt. n.1 (referencing U.S.S.G. § 4B1.2(b) and § 4B1.2 cmt. n.1). Our court has “squarely rejected” the argument that conspiracy offenses fail to qualify as controlled substance offenses under these cross-referenced career-offender definitions. United States v. Bailey, 677 F.3d 816, 818 (8th Cir. 2012) (per curiam); United States v. Mendoza-Figueroa, 65 F.3d 691, 694 (8th Cir. 1995) (en banc) (holding that the inclusion of conspiracy offenses in § 4B1.2 cmt. n.1 “is well within the Sentencing Commission’s statutory authority” as described in Stinson v. United States, 508 U.S. 36, 38, 113 S.Ct. 1913, 123 L.Ed.2d 598 (1993)). In the absence of error, there was no plain error.

Further, the district court did not abuse its discretion in making the revocation sentence consecutive to the new sentence. United States v. Valure, 835 F.3d 789, 791 (8th Cir. 2016) (standard of review); see also 18 U.S.C. § 3584(b) (authorizing consecutive sentences and stating that courts “shall consider” the factors of 18 U.S.C. § 3553(a) when deciding whether to make a revocation sentence consecutive or concurrent). Here, the district court thoughtfully, and at some length, analyzed the § 3553(a) factors as to both sentences. The district court expressly considered the mitigating and aggravating circumstances, discussed Ramirez’s several arguments, and explained its reasoning on the record. At the end of the day, the district court elected to place substantial weight on the facts that Ramirez has an extensive history of firearm-related convictions and supervised release violations and that previous terms of incarceration and supervised release failed to curtail his use of guns.

We affirm the judgment of the district court.

All Citations

782 Fed.Appx. 521 (Mem)

Footnotes

1 The Honorable Timothy L. Brooks, United States District Judge for the Western District of Arkansas.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-3598

United States of America

Appellee

v.

Roy Ramirez

Appellant

No: 18-3599

United States of America

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v.

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Appellant

Appeals from U.S. District Court for the Western District of Arkansas - Fayetteville
(5:13-cr-50043-TLB-1)
(5:18-cr-50032-TLB-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 30, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans