

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FIDEL ALAIN MARTIN-SOSA

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX

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APPENDIX A

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

No. 19-10793
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 1, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FIDEL ALAIN MARTIN-SOSA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-41-10

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Fidel Alain Martin-Sosa appeals the 135-month sentence he received for conspiring to deal methamphetamine. He argues that the district court erred in denying him mitigating-role and safety-valve adjustments. Seeing no error under our deferential standard for reviewing those rulings, we AFFIRM.

We review the district court's guidelines determinations for clear error. *United States v. Sanchez-Villarreal*, 857 F.3d 714, 721 (5th Cir. 2017); *United*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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States v. McElwee, 646 F.3d 328, 345 (5th Cir. 2011). A decision is not clearly erroneous if it is “plausible in light of the record as a whole.” *United States v. Zuniga*, 720 F.3d 587, 590 (5th Cir. 2013).

The mitigating-role provision of the Sentencing Guidelines “provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity.” U.S.S.G. § 3B1.2, comment. (n.3(A)). The commentary to § 3B1.2 provides a “non-exhaustive list of factors” to consider in determining whether to reduce the offense level, and, if so, by how much. *Id.* § 3B1.2, comment. (n.3(C)(i)-(v)). The burden is on the defendant to demonstrate his entitlement to the downward adjustment. *United States v. Castro*, 843 F.3d 608, 613 (5th Cir. 2016).

The record details Martin-Sosa’s participation in the drug transaction and demonstrates that he understood that he was involved in a conspiracy to traffic three kilograms of methamphetamine, that he participated in at least some of the planning or organizing for that crime, and that he would be paid for his involvement. *See* U.S.S.G. § 3B1.2, comment. (n.3)(C)(i)-(v)). Accordingly, application of the factors counsels against the adjustment and demonstrates that Martin-Sosa was not “peripheral to the advancement of the illicit activity.” *United States v. Villanueva*, 408 F.3d 193, 204 (5th Cir. 2005) (citation omitted). Although there may be some evidence weighing in favor of finding that Martin-Sosa had a mitigating role, when some factors support the adjustment, but others do not, the district court does not clearly err in denying the adjustment. *See United States v. Bello-Sanchez*, 872 F.3d 260, 264-65 (5th Cir. 2017). The district court therefore did not clearly err in rejecting the mitigating-role adjustment. U.S.S.G. § 3B1.2, comment. (n.3(A)); *see Zuniga*, 720 F.3d at 590.

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A two-level “safety valve” adjustment applies for drug offenses if the defendant meets certain criteria. *Id.* §§ 2D1.1(b)(18); § 5C1.2(a). The district court held that Martin-Sosa did not meet the requirement that he truthfully provide the Government with all known information about “the offense or offenses that were part of the same course of conduct or of a common scheme or plan.” *Id.* § 5C1.2(a)(5); *see* 18 U.S.C. § 3553(f)(5). The defendant has the burden of establishing eligibility for such a reduction. *See United States v. Flanagan*, 80 F.3d 143, 146-47 (5th Cir. 1996). The record contains evidence to suggest that Martin-Sosa did not fully and truthfully provide the Government with all known information regarding his financial stake in the conspiracy or how he became involved in the crime. As a result, the district court did not clearly err in denying the safety-valve adjustment. *See Zuniga*, 720 F.3d at 590 (citation omitted).

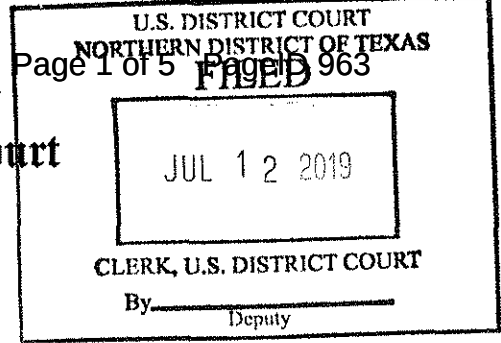
Finally, to the extent that Martin-Sosa attempts to challenge the substantive reasonableness of his within-guidelines sentence on the basis that his sentence fails to take into account his entitlement to the safety-valve and mitigating-role adjustments, his claim is reviewed under a deferential abuse-of-discretion standard. *See Holguin-Hernandez v. United States*, 140 S. Ct. 762, 767 (2020). The record does not reflect that the district court failed to account for a factor that should have received significant weight, gave significant weight to an irrelevant or improper factor, or committed a clear error of judgment in balancing the 18 U.S.C. § 3553(a) factors. *See United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006). Rather, Martin-Sosa’s arguments amount to no more than a request for this court to reweigh the § 3553(a) factors, which this court will not do as the district court is “in a superior position to find facts and judge their import under § 3553(a) with

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respect to a particular defendant.” *United States v. Campos-Maldonado*, 531 F.3d 337, 339 (5th Cir. 2008) (citation omitted).

The judgment of the district court is AFFIRMED.

APPENDIX B



United States District Court

Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA §
v. §
FIDEL ALAIN MARTIN-SOSA §

Case Number: 4:19-CR-041-A(10)

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Shawn Smith. The defendant, FIDEL ALAIN MARTIN-SOSA, was represented by Pia R. Lederman.

The defendant pleaded guilty on February 25, 2019 to count one of the four count Information filed on February 13, 2019. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) and (b)(1)(B)) Conspiracy to Possess with Intent to Distribute a Controlled Substance	12/31/2018	1

As pronounced and imposed on July 12, 2019, 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 135 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 four (4) years.

Pursuant to 18 U.S.C. §3583(d), as a condition of supervised release, upon the completion of the sentence of imprisonment the defendant shall be surrendered by the Federal Bureau of Prisons to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall comply with the standard conditions ordered by this court and shall comply with the following additional conditions:

1. The defendant shall not unlawfully possess a controlled substance.
2. The defendant shall not commit another federal, state, or local crime.
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 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 12th day of July, 2019.



JOHN McBRIDE
UNITED STATES DISTRICT JUDGE

RETURN

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

Defendant delivered on _____, 2019 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal