

Appendix A

United States v. Mendoza

United States Court of Appeals for the Fifth Circuit

June 29, 2020, Filed

No. 19-40834 Summary Calendar

Reporter

811 Fed. Appx. 270 *; 2020 U.S. App. LEXIS 20331 **; 2020 WL 3524832

UNITED STATES OF AMERICA, Plaintiff-Appellee v. CRISTIAN MENDOZA, 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Notice: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.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 Eastern District of Texas. USDC No. 4:18-CR-46-16.

United States v. Billy, 807 Fed. Appx. 413, 2020 U.S. App. LEXIS 18617 (5th Cir. Tex., June 5, 2020)

Disposition: AFFIRMED.

Core Terms

guidelines, imprisonment, ineffective, Sentencing, quotation

Counsel: For United States of America, Plaintiff - Appellee: Bradley Elliot Visosky, Assistant U.S. Attorney, Ernest Gonzalez, Assistant U.S. Attorney, U.S. Attorney's Office, Eastern District of Texas, Plano, TX.

For Cristian Mendoza, Defendant - Appellant: John Andrew Kuchera, Waco, TX.

Judges: Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

Opinion

[*270] PER CURIAM:*

Cristian Mendoza pleaded guilty, pursuant to a plea agreement, to conspiracy to possess with intent to manufacture and distribute 500 grams or more of methamphetamine and was sentenced 420 months of imprisonment, followed by five years of supervised release. He appeals, asserting that his guilty plea was not knowing and voluntary because he pleaded guilty to an offense for which he was certain to receive a guidelines range of life imprisonment despite the magistrate judge advising him that his guidelines range would not be determined until the PSR was prepared. Mendoza therefore contends that he was not aware of the consequences of his guilty plea and that had he known that he faced a guidelines range of life imprisonment he would not **[**2]** have pleaded guilty.

Because Mendoza did not raise this issue in the district court, we review for plain error only. *See United States v. Alvarado-Casas*, 715 F.3d 945, 953 (5th Cir. 2013). The record of Mendoza's rearraignment reflects that he acknowledged that he understood the consequences of his plea — including the maximum sentence that could be imposed and the operation of the Sentencing Guidelines — and that he was pleading voluntarily, that no one had threatened him or forced him to plead guilty, and that no one had made any **[*271]** promises other than what was provided in the plea agreement. Mendoza's "solemn declarations in open court . . . carry a strong presumption of verity." *United States v. Palmer*, 456 F.3d 484, 491 (5th Cir. 2006) (internal quotation marks, brackets, and citations omitted). Contrary to Mendoza's assertion, he did not plead guilty to an offense for which he was certain to receive a guidelines range of life imprisonment. To the extent Mendoza argues that the plea agreement lacked consideration, the record reflects that he did, indeed, receive consideration for his plea. Mendoza has not shown any error, plain or otherwise, with respect to the validity of his plea.

Mendoza also asserts that his trial counsel was ineffective for failing to object to the denial of an acceptance of responsibility **[**3]** reduction. Mendoza did not raise this claim in the district court, and we conclude that this is not one of the "rare cases" in which the record is sufficiently developed to allow consideration of an ineffective assistance of counsel claim on direct appeal. *United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014) (internal quotation marks and citation omitted). Thus, we decline to consider Mendoza's ineffective assistance claim without prejudice to his right to seek collateral review. *See id.*

AFFIRMED.

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* 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.