

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

PEDRO FERMIN BARAJAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

APPENDIX A

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

No. 19-11190
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 25, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PEDRO FERMIN BARAJAS,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-119-1

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Pedro Fermin Barajas pleaded guilty to being a felon in possession of a firearm and was sentenced to 60 months in prison. He now appeals, challenging the substantive reasonableness of his above-guidelines sentence.

Fermin Barajas advocated for a shorter sentence in the district court, so he preserved his substantive reasonableness challenge. *See Holguin-*

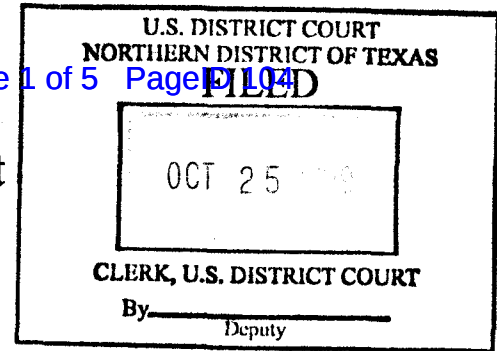
* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Hernandez v. United States, 140 S. Ct. 762, 766-67 (2020). In reviewing the substantive reasonableness of a sentence, this court applies an abuse of discretion standard. *See Gall v. United States*, 552 U.S. 51 (2007). A non-guidelines sentence is unreasonable if it does not account for a factor that should have received significant weight, gives significant weight to an irrelevant or improper factor, or represents a clear error of judgment in balancing the sentencing factors. *See United States v. Nguyen*, 854 F.3d 276, 283 (5th Cir. 2017).

The district court in this case determined a 60-month sentence was necessary based on Fermin Barajas's extensive criminal history, which included numerous convictions for theft, burglary of a habitation, assault with bodily injury to a family member, and possession of a controlled substance. Fermin Barajas contends that the district court failed to give proper weight to mitigating factors, such as his steady employment history, committed marriage, and low rate of recidivism. However, this court will not engage in a reweighing of the 18 U.S.C. § 3553(a) factors. *See Gall*, 552 U.S. at 51. Fermin Barajas has not shown that the district court abused its discretion in concluding that his lengthy criminal history outweighed his mitigating characteristics. *See United States v. Smith*, 440 F.3d 704, 709-10 (5th Cir. 2006).

The judgment of the district court is AFFIRMED.

APPENDIX B

United States District CourtNorthern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA §

v. §

Case Number: 4:19-CR-119-A(01)

PEDRO FERMIN BARAJAS §

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney John P. Bradford. The defendant, PEDRO FERMIN BARAJAS, was represented by Federal Public Defender through Assistant Federal Public Defender Michael A. Lehmann.

The defendant pleaded guilty on May 10, 2019 to the one count Indictment filed on April 17, 2019. 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 Firearm

Date Offense Concluded

03/02/2019

Count

1

As pronounced and imposed on October 25, 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 60 months. This sentence shall run concurrently with any future sentences which may be imposed in Case Nos. 1585850D, 1585851D, 1585853D, 1584854D filed in the 297th Judicial District Court, and Case No. 1585852 filed in the Tarrant County Criminal Court 1.

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 standard conditions ordered by this Court and shall comply with the following additional 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).

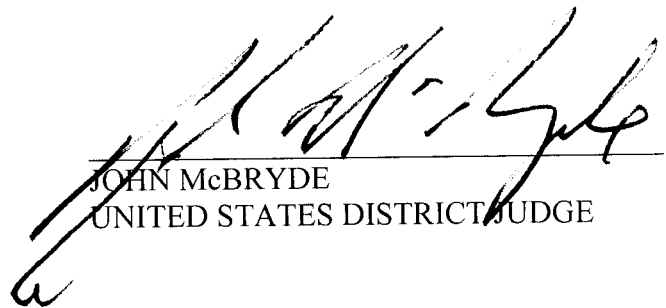
FINE

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 25th day of October, 2019.



JOHN McBRYDE
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