

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AGUSTIN MADRID,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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Northern District of Texas

APPENDIX A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 30, 2020

Lyle W. Cayce
Clerk

No. 20-10106
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

AGUSTIN MADRID, *also known as* AUGUSTIN MADRID,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-273-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges*.

PER CURIAM:*

Agustin Madrid appeals his 188-month, within-guidelines range sentence for possession with intent to distribute a mixture and substance containing a detectable amount of methamphetamine. He contends that the district court procedurally erred by determining, in denying his motion for a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

downward variance, that it lacked discretion to impose a downward variance based on a policy disagreement with the Guidelines. Because Madrid did not object in the district court on that specific ground, we review this issue for plain error. *See United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013).

In light of the entire record, it is neither clear nor obvious—but, rather, subject to reasonable dispute—that the district court’s comments reflected a belief that it lacked discretion to impose a variant sentence based on a policy disagreement with the drug Guidelines. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). The court expressly stated that it would take Madrid’s policy-based arguments into consideration in setting his sentence. And the court explicitly based its denial of a variance on the arguments in the Government’s response to Madrid’s motion, which addressed only the merits of Madrid’s policy-based contentions and made no reference to the court’s (lack of) discretion to grant a policy-based variance. Accordingly, Madrid fails to demonstrate plain procedural error. *See id.*

The judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

AGUSTIN MADRID

Case Number: 4:19-CR-00273-P(01)
U.S. Marshal's No.: 64806-280
Matthew Weybrecht, Assistant U.S. Attorney
John Stickney, Attorney for the Defendant

On October 9, 2019 the defendant, AGUSTIN MADRID, entered a plea of guilty as to Count One of the Indictment filed on September 18, 2019. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841 (a)(1) and (b)(1)(C))	Possession of a Controlled Substance with Intent to Distribute	8/20/2019	One

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on September 18, 2019.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed January 23, 2020.



MARK T. PITTMAN
U.S. DISTRICT JUDGE

Signed January 28, 2020.

Judgment in a Criminal Case
Defendant: AGUSTIN MADRID
Case Number: 4:19-CR-00273-P(1)

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IMPRISONMENT

The defendant, AGUSTIN MADRID, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **One Hundred Eighty-Eight (188) months** as to Count One of the Indictment filed on September 18, 2019.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Three (3) years** as to Count One of the Indictment filed on September 18, 2019.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and 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;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

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Defendant: AGUSTIN MADRID
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In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court;

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 (copayment) at the rate of at least \$25 per month; and,

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 (copayment) at a rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case
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RETURN

I have executed this judgment as follows:

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

United States Marshal

BY
Deputy Marshal