

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICKY CARDENAS,

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

/s/ Kevin Joel Page

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Appendix A Judgment and Opinion of Fifth Circuit, CA No. 20-10708, dated June 14, 2021, *United States v. Cardenas*, 850 Fed. Appx. 268 (unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered June 30, 2020. *United States v. Cardenas*, Dist. Court 4:19-CR-00368-P-1.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 14, 2021

No. 20-10708
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RICKY CARDENAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-368-1

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 14, 2021

No. 20-10708
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RICKY CARDENAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-368-1

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Ricky Cardenas pleaded guilty to possession with intent to distribute methamphetamine. The presentence report (PSR) held Cardenas responsible for 1,167 kilograms of converted drug weight. Cardenas objected to this amount because some of the methamphetamine was for his personal

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-10708

use. The district court overruled Cardenas's objection to the drug quantity calculation, rejected his request for a downward variance, and sentenced him to 165 months in prison.

Cardenas argues that the district court erred in calculating the drug quantity attributable to him. He does not challenge the factual finding that he possessed 1,167 kilograms of converted drug weight but argues that there was not sufficient evidence to show that he intended to distribute more than 1,000 kilograms of converted drug weight. We review the district court's factual finding on drug quantity for clear error. *United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005).

Contrary to Cardenas's argument, 1,167 kilograms of combined drug weight, supported by the facts in the PSR, shows that he possessed the methamphetamine with the intent to distribute it. *See United States v. Rains*, 615 F.3d 589, 594 (5th Cir. 2010); *United States v. Trujillo*, 502 F.3d 353, 357 (5th Cir. 2007). Cardenas does not present any evidence of his actual drug use but simply speculates as to the amount of daily drug usage. This is not sufficient to show that the PSR's information is "materially untrue, inaccurate, or unreliable." *United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012) (internal quotation marks and citation omitted). Considering the record as a whole, the district court's factual finding that Cardenas possessed with the intent to distribute between 1,000 and 3,000 kilograms of converted drug weight is plausible and not clearly erroneous. *See Betancourt*, 422 F.3d at 246.

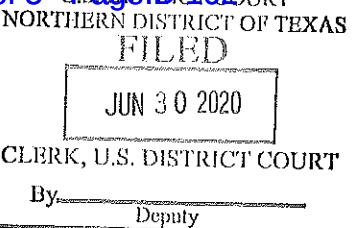
Cardenas requested credit for time served in federal custody prior to his sentencing. The district court stated that it thought that the credit for time served would be granted and granted Cardenas's request to include the matter in the judgment, which the district court did. There is nothing in the record to suggest that the district court would have lowered Cardenas's

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sentence had it known that the recommendation for credit for time served was not mandatory. In *United States v. Taylor*, 973 F.3d 414, 418 (5th Cir. 2020), we noted that district courts are not permitted to compute sentence credit, that a request for such credit was inviting error, and that any such error would be reversed only if it resulted in manifest injustice. In this case, there is no uncertainty in the district court's intent, and Cardenas has failed to demonstrate entitlement to a limited remand under *Taylor*.

AFFIRMED.

APPENDIX B



UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:19-CR-368-P(01)

RICKY CARDENAS

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Shawn Smith. The defendant, RICKY CARDENAS, was represented by Federal Public Defender through Assistant Federal Public Defender John J. Stickney.

The defendant pleaded guilty on January 31, 2020 to the one count Indictment filed on December 11, 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. § 841(a)(1) and (b)(1)(C) Possession with Intent to Distribute a Controlled Substance	November 18, 2019	1

As pronounced and imposed on June 30, 2020, 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 165 months. This sentence shall run concurrently with any future sentences which may be imposed in Case Nos. CR19-0993 and CR20-0008, in the 43rd Judicial District Court, Parker County, Texas, and Case No. CCL2-19-0826, in the Parker County Court of Law No. 2, in Weatherford, which are related to the instant offense. This sentence shall run consecutively to any future sentences which may be imposed in Case Nos. CR15-0454 and CR15-0463, in the 43rd Judicial District Court of Parker County, which are parole revocations.

The court ordered the defendant shall receive credit for the time he served in federal custody from December 18, 2019, through June 30, 2020, pursuant to a writ of habeas corpus ad prosequendum.

The court recommends to the Bureau of Prisons that defendant serve his period of imprisonment at any Federal Correctional Institution near the Weatherford, Texas area, if possible.

The court recommends to the Bureau of Prisons that defendant be permitted to participate in any vocational programs, if eligible.

The court recommends to the Bureau of Prisons that defendant be allowed to participate in the Institution Residential Drug Abuse Treatment Program.

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 following conditions of supervised release:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not possess illegal controlled substances.
3. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
4. 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.
5. The defendant shall 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.
6. The defendant must 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.
7. 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 (copayment) at the rate of at least \$25 per month.
8. 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 30th day of June, 2020.



MARK T. PITTMAN
UNITED STATES DISTRICT JUDGE

RETURN

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

Defendant delivered on _____, 2020 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal