

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 21, 2021

Lyle W. Cayce
Clerk

No. 20-10648
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAVIER ROSALES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:09-CR-160-3

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

In 2010, Javier Rosales, federal prisoner # 39033-177, was sentenced to 324 months of imprisonment after pleading guilty to conspiracy to distribute at least 50 grams of methamphetamine. He now appeals the denial of the 18 U.S.C. § 3582(c)(2) motion he filed in 2020 and the denial of his

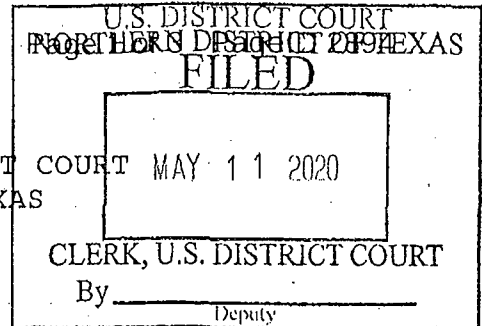
* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

subsequent motion for reconsideration. He argues that the district court abused its discretion in denying his motion to reduce his sentence pursuant to Amendment 782, and he contends that the district court improperly reweighed the evidence before it at the original sentencing to offset the 62-month applicable reduction.

We pretermitt any issues concerning the timeliness of Rosales's motion for reconsideration and notice of appeal; the Government has not raised such challenges, and any untimeliness would not present a jurisdictional impediment. See *United States v. Martinez*, 496 F.3d 387, 388-89 (5th Cir. 2007).

The district court concluded, as a matter of discretion, that Rosales should not receive a reduction in sentence. Both in its original order and the order denying the motion for reconsideration, the court explained the reasons it would not reduce Rosales's sentence, which focused on the seriousness of Rosales's conduct. The district court reviewed all the relevant facts and materials, considered the request in light of the 18 U.S.C. § 3553(a) factors, and declined to grant a reduction. The district court did not abuse its discretion in denying Rosales's § 3582(c)(2) motion or his motion for reconsideration. See *United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009); *United States v. Rabhan*, 540 F.3d 344, 346-47 (5th Cir. 2008).

AFFIRMED.



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

VS.

JAVIER ROSALES

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§

NO. 4:09-CR-160-A

ORDER

The court has concluded that defendant JAVIER ROSALES ("Rosales") should not receive the reduction in sentence he seeks by the document he filed May 7, 2020, titled "Motion for Reduction in Sentence ('Drugs Minus Two')." ."

Rosales is correct in stating that his guideline imprisonment sentencing range was 324 to 405 months when he was sentenced in June 2010, and that his reduced sentencing range, once recalculated pursuant to the statute and amendments on which his motion is based, becomes 262 to 327 months. If the court were sentencing anew and were faced with a 262 to 327 months guideline imprisonment range, the court is satisfied that it would have sentenced at the upper part of that range, bearing in mind the conclusion expressed by the court at the sentencing hearing that the sentence of 324 months' imprisonment was "a reasonable sentence that adequately and appropriately addresses all of the factors the Court should consider under the sentencing statute 18, United States Code, Section 3553(a)." ."

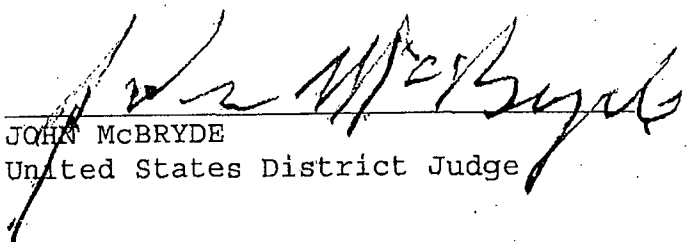
Doc. 295 at 17.¹ The presentence report establishes a close relationship between Rosales and at least one Mexican drug cartel. Doc. 272 at 8, ¶ 33. By use of proceeds from the sales of drugs obtained from Mexico, Rosales participated in the financing of the purchasing, for transfer to Mexico, of a tremendous number of weapons, including a significant number of firearms, rounds of .50 caliber ammunition, magazines for rifles, and other items that were prohibited in the U.S. Munitions List. Id. at 8-13, ¶¶ 33-56; 15-16, ¶¶ 63-67. The court is not persuaded that anything to which Rosales called the court's attention in his motion would justify a reduction in Rosales's sentence of imprisonment of 324 months. Upon a re-review of the material the court had before it when it imposed Rosales's sentence in June 2010, the court is inclined to think that the sentence of imprisonment for 324 months probably was not sufficient, particularly taking into account the probable harm in Mexico that the tremendous quantity of weaponry smuggled by Rosales and those associated with him into Mexico undoubtedly ended up causing.

¹ The "Doc. ____" references are to the numbers assigned to the referenced items on the docket in this Case No. 4:09-CR-160-A.

Therefore,

The court ORDERS that Rosales's request for a reduction in his sentence be, and is hereby, denied.

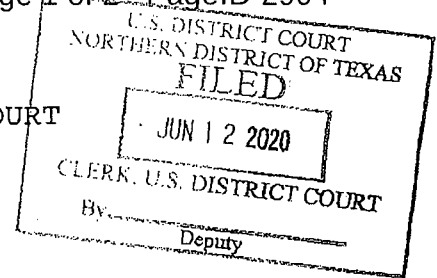
SIGNED May 11, 2020.



JOHN MCBRYDE

United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



UNITED STATES OF AMERICA §
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VS. § NO. 4:09-CR-160-A
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ALBERTO PULIDO, ET AL. §

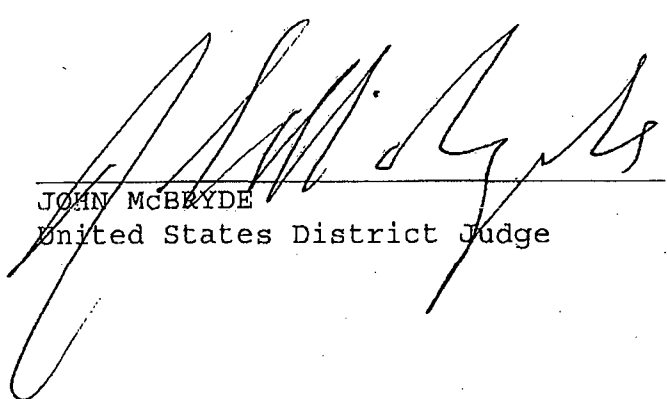
ORDER

Came on for consideration the motion of defendant Javier Rosales ("Rosales") for reconsideration of the court's order of May 11, 2020, denying his motion to reduce sentence. For the reasons discussed in the May 11 order, the court is not granting the motion. A sentence of 324 months is a reasonable sentence that adequately and appropriately addresses all of the factors the court should consider under 18 U.S.C. § 3553(a). The statement made at sentencing to the effect that Rosales got involved in something that was a very serious offense but that the court was giving him the benefit of the lowest sentence his guideline range provided for does not change the analysis. Had the guideline range been lower, as it is now, the court would still have imposed the same sentence. As stated at the sentencing hearing, "The reason I'm sentencing at that level is because I think it's a reasonable sentence that properly and

adequately addresses all of the factors the Court should consider." Doc.¹ 295 at 17.

The court ORDERS that Rosales's motion for reconsideration be, and is hereby, denied.

SIGNED June 12, 2020.



JOHN MCBRYDE
United States District Judge

¹ The "Doc. ___" reference is to the number of the item on the docket in this case, No. 4:09-CR-160-A.