

United States Court of Appeals For the First Circuit

No. 20-1521

UNITED STATES,

Appellee,

v.

CARLOS GOTAY-GUZMAN, a/k/a Negro,

Defendant - Appellant.

Before

Kayatta, Barron and Gelpí,
Circuit Judges.

JUDGMENT

Entered: December 8, 2021

Defendant-appellant Carlos Gotay-Guzman pleaded guilty, pursuant to a plea agreement, to conspiracy to possess controlled substances with intent to distribute and possession of a weapon in furtherance of a drug trafficking crime. On appeal, he argues that the district court erred by assigning criminal history points to certain Puerto Rico convictions. He contends, for the first time, that the convictions should have been considered "foreign" and therefore exempt under USSG § 4A1.1(b). Gotay-Guzman concedes that the claim was not preserved before the district court and that plain-error review therefore applies. The government has filed a motion requesting dismissal or summary disposition, bypassing discussion of the appeal waiver in Gotay-Guzman's plea agreement.

We have considered carefully the arguments set out in the parties' submissions and relevant portions of the record. Even assuming, without deciding, that the appeal is not barred by the appeal waiver in the plea agreement, we conclude that Gotay-Guzman has not satisfied the demanding plain error standard; thus, affirmance is in order. See 1st Cir. R. 27.0(c) (court may summarily dispose of appeal under appropriate circumstances); see also United States v. Grullon, 996 F.3d 21, 32–33 (1st Cir. 2021) (absent clear and binding precedent, "there can be no plain error"); United States v. Arsenault, 833 F.3d 24, 29 (2016) (plain error standard of review); United States v. Torres-Rosa, 209 F.3d 4, 8 (1st Cir. 2000) (on plain error review, rejecting argument that

convictions from Puerto Rico courts "cannot be counted in amassing [a defendant's] criminal history score"). Accordingly, we grant the government's motion for summary disposition and affirm.

Affirmed. See 1st Cir. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

Michael March Brownlee

Carlos Gotay-Guzman

Max J. Perez-Bouret

Julia Meconiates

Myriam Yvette Fernandez-Gonzalez

Mariana E. Bauza Almonte

Edward Gantar Veronda

Jonathan E. Jacobson