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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4079

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEANDRE EARP, a/k/a Dre Lok,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:19-cr-00395-D-2)

Submitted: December 16, 2022 Decided: February 3, 2023

Before AGEE and RICHARDSON, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Leslie Carter Rawls, Charlotte, North Carolina, for Appellant. Michael F. Easley, Jr., United States Attorney, David A. Bragdon, Assistant United States Attorney, Kristine L. Fritz, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Deandre Earp appeals the 480-month sentence imposed following his guilty plea to violent crime in aid of racketeering (VICAR) and aiding and abetting, in violation of 18 U.S.C. §§ 2, 1959(a)(5) (Count 1), and various drug offenses. Earp argues that the district court erred in declining to grant him a reduction for acceptance of responsibility pursuant to U.S. Sentencing Guidelines Manual § 3E1.1 (2021). We affirm.

"We review a district court's decision concerning an acceptance-of-responsibility adjustment for clear error." *United States v. Dugger*, 485 F.3d 236, 239 (4th Cir. 2007). "Under the clear error standard, we will only reverse if left with the definite and firm conviction that a mistake has been committed." *United States v. Doctor*, 958 F.3d 226, 234 (4th Cir. 2020) (internal quotation marks omitted).

The Guidelines provide for a reduction of two offense levels "[i]f the defendant clearly demonstrates acceptance of responsibility for his offense." USSG § 3E1.1(a). "To earn the reduction, a defendant must prove to the court by a preponderance of the evidence that he has clearly recognized and affirmatively accepted personal responsibility for his criminal conduct." *United States v. Bolton*, 858 F.3d 905, 914 (4th Cir. 2017) (internal quotation marks omitted). "A guilty plea may be evidence of acceptance, but it does not, standing alone, entitle a defendant to a reduction as a matter of right." *Dugger*, 485 F.3d at 239 (internal quotation marks omitted); *see* USSG § 3E1.1 cmt. n.3.

"To determine whether a defendant has accepted responsibility, the sentencing judge must weigh the totality of the circumstances." *United States v. Harris*, 890 F.3d 480, 488 (4th Cir. 2018). The Guidelines commentary provides a nonexclusive list of

considerations relevant to this inquiry, which includes, as pertinent here, the defendant's "truthfully admitting the conduct comprising the offense(s) of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under [USSG] § 1B1.3." USSG § 3E1.1 cmt. n.1(A); *see* USSG § 3E1.1 cmt. n.3. Notably, "[a] defendant who falsely denies or frivolously contests relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility." USSG § 3E1.1 cmt. n.1(A). Because "[t]he sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility," "the determination of the sentencing judge is entitled to great deference on review." USSG § 3E1.1 cmt. n.5; *see Harris*, 890 F.3d at 488.

Earp argues that he should have received a reduction under USSG § 3E1.1(a) because he pled guilty, thereby admitting all of the elements necessary to prove his guilt. While he raised numerous objections to the presentence report, he asserts that these disputes were legitimate, as most challenged statements provided by cooperating sources.

As Earp concedes, however, the district court found one of his objections frivolous—specifically, his objection to an enhancement under USSG § 2D1.1(b)(2) on the ground that he did not discuss killing Joelle Hamlin. Earp's VICAR conviction in Count 1 was expressly predicated on his participation in the conspiracy to murder Hamlin. *See* 18 U.S.C. § 1959(a)(5); *United States v. Zelaya*, 908 F.3d 920, 926-27 (4th Cir. 2018) (describing elements of offense). Earp admitted to that conduct as an element of the offense during his plea hearing and raised no objection during that hearing to the Government's detailed factual proffer regarding his involvement in that conspiracy. Moreover, Earp's

participation in that conspiracy was amply supported by the evidence adduced at sentencing, which easily refuted Earp's strained assertions that he only discussed fighting Hamlin. We conclude that the district court did not clearly err in finding this objection frivolous.

Earp also asserts that many of his objections would not have contradicted his guilty plea. This argument is misplaced, however, as we have made clear that USSG § 3E1.1(a) does not apply unless the defendant "first accept[s] responsibility for *all* of his criminal conduct." *United States v. May*, 359 F.3d 683, 694 (4th Cir. 2004) (internal quotation marks omitted). In view of the district court's well-supported finding that Earp frivolously disputed his involvement in the conspiracy to murder Hamlin, we conclude that the district court did not clearly err in denying a reduction under USSG § 3E1.1(a).

The Guidelines provide for an additional one-level reduction upon motion of the Government "[i]f the defendant qualifies for a decrease under [USSG § 3E1.1(a)]" and other requirements are satisfied. USSG § 3E1.1(b). Because the district court did not clearly err in denying a reduction under USSG § 3E1.1(a), Earp also was not entitled to a reduction under USSG § 3E1.1(b).

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: February 3, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4079
(5:19-cr-00395-D-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEANDRE EARP, a/k/a Dre Lok

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: February 3, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4079, US v. Deandre Earp
5:19-cr-00395-D-2

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

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STATUTORY PROVISIONS INVOLVED

U.S.S.G. § 3E1.1 provides:

(A). If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2-Levels.

(B). If the defendant qualifies for a decrease under subsection (A), the offense level determined prior to the operation of subsection (A) is level 16 or greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1-Additional level.