

APPENDIX A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 9 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 21-50181

Plaintiff-Appellee,

D.C. No.

8:19-cr-00155-DOC-1

v.

CLAUDIA CASTILLO GUZMAN, AKA
Claudia Castillo, AKA Claudia Castro, AKA
Claudia Guzman, AKA Claudia Castillo
Guzman, AKA Claudia Guzman-Castillo,
AKA Claudia Penaloza, AKA Claudia
Castillo Penaloza, AKA Claudia Rubio,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted December 6, 2022**
Pasadena, California

Before: R. NELSON, BADE, and FORREST, Circuit Judges.

After engaging in multiple sales of drugs and firearms to undercover agents,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellant Claudia Castillo Guzman (“Guzman”) was indicted and pleaded guilty to conspiracy to distribute more than 50 grams of methamphetamine. The district court sentenced her to the mandatory minimum of 120 months’ imprisonment. Guzman argues that the district court violated Rule 32 of the Federal Rules of Criminal Procedure by failing to explicitly rule on her objections to the presentence report (“PSR”), and imposed a procedurally erroneous sentence by failing to adequately explain its sentencing decision, consider Guzman’s claim of sentencing manipulation, and address her eligibility for safety valve relief under 18 U.S.C. § 3553(f).¹ We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and we affirm.

1. Under Rule 32(i)(3)(B), the district court “must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing.” Fed. R. Crim. P. 32(i)(3)(B). We have “mandated strict compliance with Rule 32, explaining that the rulings must be express or explicit.” *United States v. Doe*, 705 F.3d 1134, 1153 (9th Cir. 2013) (quotation marks and citations omitted). However, a district court is not required to resolve legal disputes; “[w]hen a

¹ Because Guzman’s claims fail on the merits, we do not reach the government’s waiver arguments.

defendant fails to make specific allegations of factual inaccuracy in a PSR, a district court has no obligation under Rule 32(i)(3)(B).” *United States v. Christensen*, 732 F.3d 1094, 1102 (9th Cir. 2013).

Here, the district court was not required to explicitly resolve Guzman’s objections to the PSR’s recommended total offense level because she raised only legal arguments based on the government’s alleged sentencing manipulation and her eligibility for safety valve relief. Because she did not object to factual inaccuracies in the PSR, she failed to trigger the requirements of Rule 32. *See United States v. Petri*, 731 F.3d 833, 841 (9th Cir. 2013) (“A specific factual objection addresses a factual inaccuracy; it does not merely object to recommendations, opinions, or conclusions.”).

2. The district court did not procedurally err in calculating the Guidelines or in explaining its below-Guidelines sentence. A district court “must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Gall v. United States*, 552 U.S. 38, 50 (2007). “Nonetheless, when a judge decides simply to apply the Guidelines to a particular case, doing so will not necessarily require lengthy explanation.” *Rita v. United States*, 551 U.S. 338, 356 (2007). Here, the district court identified the Guidelines range as a starting point. The court then made an individualized assessment of Guzman’s case, varying downward after hearing argument and

expressly considering the 18 U.S.C. § 3553(a) factors—including Guzman’s horrific childhood, her efforts at rehabilitation, her criminal history, and the circumstances of the crime, which involved the sale of firearms—and concluded that the mandatory minimum sentence was appropriate. Thus, the district court adequately explained the sentence it imposed. *See, e.g., United States v. Cherer*, 513 F.3d 1150, 1159 (9th Cir. 2008) (citing *United States v. Sylvester Norman Knows His Gun, III*, 438 F.3d 913, 918 (9th Cir. 2006) (the requirement that a district court sufficiently consider the Guidelines as well as the § 3553(a) factors “does not necessitate a specific articulation of each factor separately, but rather a showing that the district court considered the statutorily-designated factors in imposing a sentence”)).

3. Guzman’s “sentencing manipulation” argument also fails.

“‘[S]entencing manipulation’ occurs when the government increases a defendant’s guideline sentence by conducting a lengthy investigation which increases the number of drug transactions and quantities for which the defendant is responsible.” *United States v. Boykin*, 785 F.3d 1352, 1360 (9th Cir. 2015). We have explained that “[t]o prove sentencing manipulation, a defendant must show ‘that the officers engaged in the later drug transactions solely to enhance his potential sentence,’” and that relief for sentencing manipulation is generally found in “‘only the extreme and unusual case’ involving ‘outrageous governmental conduct.’” *Id.* (citations

omitted).

In her objections to the PSR, Guzman stated that “[t]here is a valid argument to be made regarding sentencing manipulation,” but she did not make that argument, or point to any evidence that the government engaged in outrageous conduct by prolonging its investigation with the sole purpose of increasing her sentence. Guzman’s suggestion that the government could have arrested her after the first methamphetamine sale is insufficient. *See United States v. Baker*, 63 F.3d 1478, 1500 (9th Cir. 1995) (“[W]e decline to adopt a rule that, in effect, would find ‘sentencing manipulation’ whenever the government, even though it has enough evidence to indict, opts instead to wait in favor of continuing its investigation.”).

4. Finally, a district court’s failure to address a defendant’s sentencing argument “is not procedural error where ‘adequate explanation’ may ‘be inferred from the PSR or the record as a whole.’” *United States v. Flores*, 725 F.3d 1028, 1041–42 (9th Cir. 2013) (quoting *United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008)). Guzman argues that she is eligible for safety valve relief under § 3553(f)(1), but she did not respond, either at sentencing or on appeal, to the explanation in the PSR addendum that she was not safety valve eligible under § 3553(f)(2) because she pleaded guilty to possessing a firearm. The district court adequately addressed Guzman’s ineligibility for safety valve relief when it stated that it did not apply. *See, e.g., United States v. Trujillo*, 713 F.3d 1003, 1009 (9th

Cir. 2013) (“Sometimes the circumstances will call for a brief explanation; sometimes they will call for a lengthier explanation.” (quoting *Rita*, 551 U.S. at 357)).

AFFIRMED.

APPENDIX B

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. SA CR 19-00155-DOC-1

Defendant Claudia Castillo GuzmanSocial Security No. 1 1 5 0

Guzman-Castillo, Claudia; Castillo, Claudia;
Rubio, Claudia; Castro, Claudia; Guzman, Claudia
Castillo; Penaloza, Claudia; Guzman, Claudia;

(Last 4 digits)

akas: Penaloza, Claudia Castillo

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
JULY	29	2021

COUNSEL

Karren Kenney, CJA

(Name of Counsel)

PLEA

☒ **GUILTY**, and the court being satisfied that there is a factual basis for the plea.☐ **NOLO
CONTENDERE**☐ **NOT
GUILTY**

FINDING

There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:

Count 1: Conspiracy to Distribute Methamphetamine 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A)(viii)

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Claudia Castillo Guzman, is hereby committed on Count 1 of the Indictment to the custody of the Bureau of Prisons for a term of 120 months.

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline §5E1.2(a), all fines are waived as the Court finds that the defendant has established that she is unable to pay and is not likely to become able to pay any fine.

The Court has found that the property identified in the preliminary order of forfeiture is subject to forfeiture. The preliminary order is incorporated by reference into this judgment and is final as to the defendant.¹

¹ This recommended language regarding an order of forfeiture is provided in anticipation that, by the time of sentencing, the government will have sought such an order. At this time, the Probation Officer is not aware that an order of forfeiture has been issued. In the event that no order has been issued by the time of sentencing, the forfeiture language will not be applicable.

USA vs. Claudia Castillo Guzman

Docket No.: SA CR 19-00155-DOC-1

The Court recommends that the Bureau of Prisons conduct a mental health evaluation of the defendant and provide all necessary treatment.²

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five (5) years under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04.
2. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
3. The defendant shall cooperate in the collection of a DNA sample from the defendant.
4. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
5. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using alcohol and illicit drugs, and from abusing prescription medications during the period of supervision.
6. The defendant shall participate in mental health treatment, which may include evaluation and counseling, until discharged from the program by the treatment provider, with the approval of the Probation Officer.
7. During the course of supervision, the Probation Officer, with the agreement of the defendant and defense counsel, may place the defendant in a residential treatment program for co-occurring disorders approved by the United States Probation & Pretrial Services Office for treatment of mental health disorders and substance abuse or drug dependency, which may include psychiatric services, counseling and substance abuse testing. The defendant shall reside in the treatment program until discharged by the Program Director and Probation Officer.
8. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the Court-ordered treatment to the aftercare contractors during the period of community supervision. The defendant shall provide payment and proof of payment as directed by the Probation Officer. If the defendant has no ability to pay, no payment shall be required.

² The discussion of mental health programs is not intended to be part of the Court's decision on whether to sentence the defendant to incarceration or on the length of the term to be imposed, but is merely to provide an indication of possible opportunities for rehabilitation within the prison system.

USA vs. Claudia Castillo Guzman

Docket No.: SA CR 19-00155-DOC-1

9. The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name, other than the defendant's true legal name, nor shall the defendant use, any name other than the defendant's true legal name without the prior written approval of the Probation Officer.
10. The defendant shall submit her person and property to search and seizure at any time of the day or night by any law enforcement officer with or without a warrant and with or without reasonable or probable cause.
11. The defendant shall report to the United States Probation & Pretrial Services Office within 72 hours of her release from custody.
12. The defendant shall report in person directly to the Court within 21 days of her release from custody, at a date and time to be set by the United States Probation Office, and thereafter report in person to the Court as directed during her first year of supervised release.
13. The defendant shall not possess, have under control, or have access to any firearm, explosive device, or other dangerous weapon, as defined by federal, state, or local law.

The Court authorizes the Probation & Pretrial Services Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

The Court authorizes the Probation Officer to disclose the Presentence Report, and any previous mental health evaluations or reports, to the treatment provider. The treatment provider may provide information (excluding the Presentence Report), to State or local social service agencies (such as the State of California, Department of Social Service), for the purpose of the client's rehabilitation.

Defendant advised of right to appeal. The government's motion to dismiss remaining counts is granted by the Court. The Court recommends a facility in the So. Cal area due to close family ties. It is recommended that the defendant be allowed to participate in the Bureau of Prison's Residential Drug Abuse Program (RDAP).

USA vs. Claudia Castillo Guzman

Docket No.: SA CR 19-00155-DOC-1

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

July 29, 2021

Date



U. S. District Judge, David O. Carter

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

July 29, 2021

Filed Date

By



Courtroom Deputy Clerk, Kelly Davis

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must 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 must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

USA vs. Claudia Castillo GuzmanDocket No.: SA CR 19-00155-DOC-1☐ The defendant must also comply with the following special conditions (set forth below).**STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS**

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996. Assessments, restitution, fines, penalties, and costs must be paid by certified check or money order made payable to "Clerk, U.S. District Court." Each certified check or money order must include the case name and number. Payments must be delivered to:

United States District Court, Central District of California
 Attn: Fiscal Department
 255 East Temple Street, Room 1178
 Los Angeles, CA 90012

or such other address as the Court may in future direct.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

When supervision begins, and at any time thereafter upon request of the Probation Officer, the defendant must produce to the Probation and Pretrial Services Office records of all bank or investments accounts to which the defendant has access, including any business or trust accounts. Thereafter, for the term of supervision, the defendant must notify and receive approval of the Probation Office in advance of opening a new account or modifying or closing an existing one, including adding or deleting signatories; changing the account number or name, address, or other identifying information affiliated with the account; or any other modification. If the Probation Office approves the new account, modification or closing, the defendant must give the Probation Officer all related account records within 10 days of opening, modifying or closing the account. The defendant must not direct or ask anyone else to open or maintain any account on the defendant's behalf.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. Claudia Castillo GuzmanDocket No.: SA CR 19-00155-DOC-1**RETURN**

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____

Date_____
Deputy Marshal**CERTIFICATE**

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____

Filed Date_____
Deputy Clerk**FOR U.S. PROBATION OFFICE USE ONLY**

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant_____
Date_____
U. S. Probation Officer/Designated Witness_____
Date

APPENDIX C

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.