

United States Court of Appeals
for the Fifth Circuit

No. 22-60073
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
March 13, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LAMAR McDONALD,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:19-CR-107-1

Before HIGGINBOTHAM, GRAVES, and Ho, *Circuit Judges.*

PER CURIAM.*

Lamar McDonald was convicted after a jury trial of one count of conspiring to possess with intent to distribute 500 grams or more of a substance or mixture containing a detectable amount of cocaine and a mixture or substance containing a detectable amount of methamphetamine; two counts of possessing with intent to distribute a mixture of substance

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

No. 22-60073

containing a detectable amount of cocaine; and two counts of attempting to distribute a mixture of substance containing a detectable amount of methamphetamine. On appeal, McDonald challenges the sufficiency of the evidence to support his convictions. He further argues that the district court incorrectly applied three sentencing enhancements.

First, because McDonald preserved his sufficiency issue in the district court, our review is *de novo*. *See United States v. Carbins*, 882 F.3d 557, 562-63 (5th Cir. 2018). In reviewing preserved sufficiency claims, we determine whether “after viewing the evidence and all reasonable inferences in the light most favorable to the [Government], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Vargas-Ocampo*, 747 F.3d 299, 301 (5th Cir. 2014) (en banc) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

To prove conspiracy to possess with intent to distribute cocaine and methamphetamine, the Government must show: “(1) two or more persons, directly or indirectly, reached an agreement to possess with the intent to distribute a controlled substance; (2) the defendant knew of the agreement; (3) the defendant voluntarily participated in the agreement; and (4) the overall scope of the conspiracy involved the drug amount in the charged crime.” *United States v. Bowen*, 818 F.3d 179, 186 (5th Cir. 2016) (internal quotation marks, brackets, and citation omitted). A defendant is guilty of an attempt crime under 21 U.S.C. § 846 when, acting with the kind of culpability otherwise required to commit a substantive offense, he engages in conduct that constitutes a substantial step toward commission of the offense. *United States v. Redd*, 355 F.3d 866, 872-73 (5th Cir. 2003). To prove distribution of methamphetamine, the Government must show: “(1) knowledge, (2) possession [of the illegal substance], and (3) intent to distribute.” *United States v. Garza*, 990 F.2d 171, 174 (5th Cir. 1993). When viewing the evidence and all reasonable inferences in the light most favorable to the Government,

No. 22-60073

we conclude that the evidence was sufficient to support McDonald's convictions. *See Vargas-Ocampo*, 747 F.3d at 301.

Next, we review a denial of a motion for new trial for abuse of discretion. *United States v. Franklin*, 561 F.3d 398, 405 (5th Cir. 2009). "Generally, motions for new trial are disfavored and must be reviewed with great caution." *United States v. Piazza*, 647 F.3d 559, 565 (5th Cir. 2011). We conclude that the guilty verdict was not against the weight of the evidence and that the district court did not abuse its discretion by denying McDonald's motion for a new trial.

Finally, McDonald challenges three sentencing enhancements applied to the calculation of his offense level. We review de novo a district court's interpretation or application of the Sentencing Guidelines and its factual findings for clear error. *See United States v. Muniz*, 803 F.3d 709, 712 (5th Cir. 2015). We conclude that the district court did not clearly err when it determined that the record supported a two-level enhancement under U.S.S.G. § 2D1.1(b)(1) for possession of a firearm by a coconspirator. *See United States v. Vital*, 68 F.3d 114, 119 (5th Cir. 1995). The district court did not clearly err in applying a U.S.S.G. § 2D1.1(b)(5) enhancement because the court could reasonably infer that the methamphetamine involved in the drug-trafficking conspiracy was imported from Mexico. *United States v. Serfass*, 684 F.3d 548, 550, 553-54 (5th Cir. 2012). The district court did not clearly err in applying a three-level enhancement under U.S.S.G. § 3B1.1(b) because the evidence supported a finding that McDonald managed or supervised at least five participants in the criminal activity. *See United States v. Zuniga*, 720 F.3d 587, 590 (5th Cir. 2013).

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 13, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 22-60073 USA v. McDonald
USDC No. 1:19-CR-107-1

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and **5TH CIR. R. 35, 39, and 41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40** require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order. Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

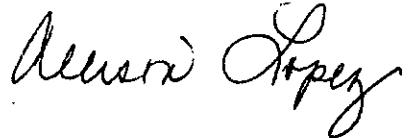
Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, and advise them of the time limits for filing for rehearing and certiorari. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: Allison G. Lopez, Deputy Clerk

Enclosure(s)

Mr. Gaines H. Cleveland
Mr. Mark David Plaisance
Mrs. Kathlyn Rose Van Buskirk

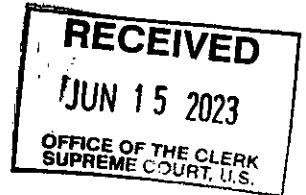
SUPREME COURT OF THE UNITED STATES

LAMAR MCDONALD,

v.

CASE NO:

UNITED STATES OF AMERICA, /



MOTION FOR EXTENSION OF TIME PURSUANT
MOTION FOR EXTENSION OF TIME
IN COMPLIANCE WITH RULE 30

Comes Now Lamar McDonald, petitioner, pro se, requesting that
from the below listed reason, his above captioned motion be GRANTED.

- 1) It has come to the petitioner's attention that this court
has docketed several cases and "STAYED them until the next term to
answer the questions presented.
- 2) The Case is McClinton v. United States, 21-1557.
- 3) The petitioner wants to request a STAY, and/or an
EXTENSION so that he can either present a question that is
also similar . I Is Apprendi v. New Jersey, still good Law?
If so then is 18 U.S.C. 3661, Unconstitutional?

RELIEF REQUESTED

- 4) For this reason, petitioner seeks to have this motion
GRANTED, and his Writ to the Supreme Court STAYED in light of
McClinton.

Executed On, June 7th, 2023

/s/ 
Lamar McDonald