Appendix

A

United States Court of Appeals
For the First Circuit

No. 22-1362

UNITED STATES,

Appellee,

v.

ADRIANO CORTEZ, a/k/a A,

Defendant - Appellant.

Before

Kayatta, Montecalvo and Aframe,
Circuit Judges.

JUDGMENT

Entered: July 10, 2024

Defendant was found guilty by a jury of conspiracy to distribute and to possess with intent to distribute 40 grams or more of fentanyl, in violation of 21 U.S.C. § 846 and 21 U.S.C. § 841(b)(1)(B), and of possession with intent to distribute 100 grams or more of heroin and 40 grams or more of fentanyl, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B). Count one attributed 100 grams or more of heroin and 40 grams or more of fentanyl to defendant, making him subject to the penalties limned in 21 U.S.C. §§ 841(b)(1)(B)(i) and (b)(1)(B)(vi). Defendant was sentenced to 121 months of immurement, at the low end of the applicable guidelines range.

Defendant raises various claims of error, including sufficiency of the evidence, constructive amendment of the indictment, the denial of his motion to dismiss the indictment for statute of limitations violations and the court's failure to give a particular jury instruction. Defendant also challenges the procedural and substantive reasonableness of his low-end sentence.

After careful review of the parties' submissions and the district court record, we find defendant's arguments unavailing.

This court reviews preserved challenges to the sufficiency of the evidence de novo, "analyzing the evidence in the light most favorable to the government and reversing only if [defendant] carries the 'heavy burden' of 'show[ing] that no rational jury could have found him guilty beyond a reasonable doubt.'" United States v. Charriez-Rolón, 923 F.3d 45, 51 (1st Cir. 2019) (quoting United States v. Scharon, 187 F.3d 17, 21 (1st Cir. 1999)). When evaluating the evidence, this court "need not conclude that 'no verdict other than a guilty verdict could sensibly be reached, but must only [be] satisfied . . . that the guilty verdict finds support in a plausible rendition of the record.'" United States v. Acevedo-Hernández, 898 F.3d 150, 161 (1st Cir. 2018) (quoting United States v. Hatch, 434 F.3d 1, 4 (1st Cir. 2006)). This "approach does not allow us to 'view each piece of evidence separately, re-weigh the evidence, or second-guess the jury's credibility calls.'" United States v. Santonastaso, 100 F.4th 62, 68 (1st Cir. 2024) (quoting Acevedo-Hernández, 898 F.3d at 161).

The record shows there was testimonial and documentary evidence that reasonably supports the jury's verdict. And considering that we "will 'revers[e] only if the defendant shows that no rational factfinder could have found him guilty[,]'" defendant has failed to show that his case meets this difficult standard. Santonastaso, id. (quoting United States v. Rodríguez-Torres, 939 F.3d 16, 23 (1st Cir. 2019)).

Defendant's challenges to the tolling of the statute of limitations finding, speedy trial violation, denial of a jury instruction, and the alleged constructive amendment of the indictment fare no better. Everything points out to this being a case that falls within the fleeing-from-justice exception provided by 18 U.S.C. § 3290. Consequently, the federal indictment was timely. Moreover, defendant failed to "show that the evidence adduced at trial supported the requested instruction." United States v. Daniells, 79 F.4th 57, 76 (1st Cir. 2023). As to defendant's speedy trial argument, it is undeveloped and lacking force, and "we see no reason to abandon the settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990). Additionally, the record does not show the indictment was constructively amended and supports the district court's decision to narrow the indictment in a way that did not prejudice defendant's substantial rights. Defendant has not shown otherwise.

Lastly, defendant's sentence does not evince any error. Appellate review of criminal sentences is generally conducted under an abuse of discretion standard. United States v. Carbajal-Váldez, 874 F.3d 778, 782 (1st Cir. 2017). This entails determining, first, whether the district court committed a procedural error. United States v. López-Delgado, 974 F.3d 1, 5 (1st Cir. 2020). Absent a finding of procedural error, we will then examine a sentence's substantive reasonableness. United States v. Leach, 89 F.4th 189, 195 (1st Cir. 2023). A sentence will be deemed substantively reasonable if the sentencing court offered a plausible rationale "and the sentence represents a defensible result." United States v. Rivera-Morales, 961 F.3d 1, 21 (1st Cir. 2020).

Here, the record substantiates the reasoning behind application of the challenged enhancements and the court offered an explanation of the sentence sufficient to comply with the 18 U.S.C. § 3553 factors. Based on the facts of the case and applicable guidelines, the low-end sentence is "a defensible result." Rivera-Morales, id.

Accordingly, defendant's conviction and sentence are affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc:
Adriano Alain Cortez
Carol Elisabeth Head
Timothy E. Moran
Donald Campbell Lockhart
Michael J. Crowley
John Todd Mulcahy
Corey Steinberg
Sarah B. Hoefle

Appendix B

United States Court of Appeals
For the First Circuit

No. 22-1362

UNITED STATES,

Appellee,

v.

ADRIANO CORTEZ, a/k/a A,

Defendant - Appellant.

Before

Barron, Chief Judge,
Kayatta, Gelpí, Montecalvo,
Rikelman, and Aframe, Circuit Judges.

ORDER OF COURT

Entered: October 4, 2024

Petitioner-Appellant Adriano Alain Cortez has filed a Petition for Rehearing En Banc from this court's July 10, 2024, judgment affirming his conviction and sentence.

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel.

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be Denied.

By the Court:

Anastasia Dubrovsky, Clerk

cc:
Adriano Alain Cortez, Carol Elisabeth Head, Timothy E. Moran, Donald Campbell Lockhart, Michael J. Crowley, John Todd Mulcahy, Corey Steinberg, Sarah B. Hoefle

Additional material from this filing is available in the Clerk's Office.