

# United States Court of Appeals For the First Circuit

No. 16-1202

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UNITED STATES OF AMERICA,

Appellee,

v.

CHRISTOPHER L. LAUREANO-PÉREZ, a/k/a El Negro, a/k/a Blackie,

Defendant, Appellant.

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Before

Lynch, Thompson, and Kayatta,  
Circuit Judges.

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## JUDGMENT

Entered: October 30, 2017

A jury convicted Christopher Laureano-Pérez of conspiracy to possess with intent to distribute several controlled substances in a protected location, in violation of 21 U.S.C. §§ 841(a)(1), 846, 860 (drug conspiracy), and conspiracy to possess firearms in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1), (o) (firearm conspiracy). The district court initially imposed a joint life sentence for both counts. In Laureano-Pérez's first appeal, we affirmed his conviction but vacated his sentence because the district court erred by imposing a joint sentence rather than a separate sentence for each count and by imposing a life sentence for the firearm conspiracy when the statutory maximum penalty for a violation of 18 U.S.C. § 924 is twenty years. United States v. Laureano-Pérez, 797 F.3d 45, 83 (1st Cir. 2015), cert. denied, 136 S. Ct. 915 (2016) (Laureano-Pérez I). We remanded to the district court to render "an individual sentence on each of the two counts of conviction." Id.

The district court's resentencing hearing began with a request from Laureano-Pérez to retain new counsel. He complained that his attorney had spent only a couple of minutes with him prior to the resentencing hearing and had not provided him with a copy of an updated presentence investigation report (PSR). The district court denied his request after clarifying that the purpose of the hearing was simply to correct a technical mistake in the initial sentencing and that, contrary

to Laureano-Pérez's belief, counsel did not have a new PSR to share. Laureano-Pérez also mentioned that he had brought a letter from a prison psychologist with him that discussed his activities and rehabilitative progress in prison, but that he hadn't had enough time with his attorney to show or give him the letter. The district court entered the letter as an exhibit to the proceedings and explicitly considered it as a mitigating factor when it imposed the new sentence of 480 months for the drug conspiracy conviction and 240 months for the firearm conspiracy conviction, to be served concurrently.

Laureano-Pérez now appeals from the amended judgment, arguing that the district court erred by (1) violating his Sixth Amendment right to counsel of choice when it denied his request for substitute counsel, (2) miscalculating the applicable sentencing guidelines range, and (3) failing to adequately address the § 3553(a) sentencing factors. We disagree and affirm.

"We review a trial court's decision on a defendant's request to substitute counsel for abuse of discretion." United States v. Díaz-Rodríguez, 745 F.3d 586, 590 (1st Cir. 2014) (citing United States v. Woodard, 291 F.3d 95, 106 (1st Cir. 2002)). "[T]he trial court must conduct an appropriate inquiry into the source of the defendant's dissatisfaction with his counsel." Id. (citing United States v. Prochilo, 187 F.3d 221, 228-29 (1st Cir. 1999)). Laureano-Pérez argues that the district court's "perfunctory" consideration of his request to substitute counsel did not "fully" address his request because the district court didn't ask counsel how long he had spent with his client prior to the hearing and Laureano-Pérez was left to argue his own mitigating factors. While the Sixth Amendment right to the assistance of counsel includes a defendant's "'opportunity to obtain counsel of his own choice' . . . , [a] defendant cannot exercise this right in a manner that will 'unduly hinder the fair, efficient and orderly administration of justice.'" Id. (quoting United States v. Panzardi Alvarez, 816 F.2d 813, 815, 816 (1st Cir. 1987)). "[O]nly an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to the assistance of counsel." United States v. Maldonado, 708 F.3d 38, 42 (1st Cir. 2013) (quoting Morris v. Slappy, 461 U.S. 1, 11-12 (1983)).

The district court noted that Laureano-Pérez's attorney had tried the case and therefore knew the case better than anyone. The district court also explained that, because Laureano-Pérez was in prison on the mainland, his attorney was not able to visit until Laureano-Pérez was transported back to Puerto Rico for the resentencing hearing. While the district court did not ask counsel directly about how long he had spent with his client prior to the hearing, Laureano-Pérez concedes that the district court "ended up seeing everything" because Laureano-Pérez was allowed to present the letter from the prison's psychologist. Given the limited scope of the district court's task on resentencing, Laureano-Pérez's apparent misunderstanding about the existence of a new PSR, and the district court's "inquiry into the source of the defendant's dissatisfaction with his counsel," Díaz-Rodríguez, 745 F.3d at 590, the district court did not abuse its discretion by denying Laureano-Pérez's request and proceeding with the resentencing hearing without substituting counsel.<sup>1</sup> See id.; Maldonado, 708 F.3d at 42.

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<sup>1</sup> While Laureano-Pérez emphasizes the three factors in United States v. Allen, 789 F.2d 90 (1st Cir. 1986), that we apply when a motion is made to substitute appointed counsel, we did not explicitly address all of the factors because, as we have stated before,

We next turn to Laureano-Pérez's supplemental pro se arguments about his perceived procedural errors with the district court's calculation of the applicable sentencing guidelines range. Two of his arguments challenge his sentence on the basis that the jury did not specifically find the precise quantity of each controlled substance charged in the drug conspiracy count, in purported violation of Alleyne v. United States, 133 S. Ct. 2151 (2013). We addressed this challenge in Laureano-Pérez I, where we noted that a jury need only "find that the amount of drugs is greater than that necessary for the mandatory minimum in order for that mandatory minimum to be imposed." 797 F.3d at 82 (citing United States v. Razo, 782 F.3d 31, 40 (1st Cir. 2015)). We held that, because the jury had found that Laureano-Pérez "possessed at least five kilograms of cocaine," the district court's findings about drug quantity were correct and consistent with the jury's findings. Id. These arguments are therefore foreclosed by the "law of the circuit" branch of the law of the case doctrine; as the second appellate panel to review this case, we are bound to honor the original decision's holding and reasoning addressing Laureano-Pérez's Alleyne argument.<sup>2</sup> See United States v. Carta, 690 F.3d 1, 4 (1st Cir. 2012); United States v. Matthews, 643 F.3d 9, 13 (1st Cir. 2011).

Laureano-Pérez also argues in his supplemental pro se brief that the district court impermissibly double counted his firearm possession when it applied a two-level enhancement to his base offense level during resentencing while also resentencing him on the firearm conspiracy offense. This argument could have been raised in the district court during his initial sentencing and before us in his first appeal, but it was not. It is therefore also foreclosed because the law of the case doctrine prohibits consideration of issues that "could have been[] decided on an earlier appeal." Matthews, 643 F.3d at 12-13 (citation omitted). "[T]he aggrieved party is deemed to have forfeited any right to challenge that particular decision at a subsequent date." Id. (quoting United States v. Bell, 988 F.2d 247, 250 (1st Cir. 1993)) (alteration in original). Even if we assume without deciding that the district court erred by enhancing the base offense level by two points for firearm possession, Laureano-Pérez's total base offense level would have remained the same, and the advisory sentencing range would have still been ten years to life.<sup>3</sup> Laureano-Pérez agreed during his resentencing hearing that his base offense level started at 38 and that once the district court applied a variety of enhancements, his total base offense level was 50. If the district court

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"we have our doubts about whether the Allen factors apply in cases like this one involving privately-retained counsel." United States v. Maldonado, 708 F.3d 38, 44 (1st Cir. 2013).

<sup>2</sup> In his pro se reply, Laureano-Pérez tries to get around the law of the case doctrine's foreclosure of his arguments by citing a United States Supreme Court case that considered a series of habeas petitions and turned on the application of the rules for second or successive petitions. While some narrow exceptions to the law of the case doctrine do exist, Laureano-Pérez did not mention any of them, and, regardless, none of them apply here. See United States v. Matthews, 643 F.3d 9, 14 (1st Cir. 2011).

<sup>3</sup> 21 U.S.C. §§ 841(b), 846 mandate a minimum of ten years for conspiracy to possess with intent to distribute five kilograms or more of cocaine.

had not included the two-point enhancement for firearm possession, his total base offense level would have been 48. Regardless, the district court would have treated the total base offense level as 43 because the guidelines manual does not calculate past 43.

Laureano-Pérez also presents additional procedural and substantive challenges to his sentence. He argues that the district court failed to properly consider the § 3553(a) sentencing factors when it imposed the 480-month sentence on the drug conspiracy conviction and that it did not lend sufficient weight to his post-sentencing rehabilitation, resulting in a sentence that is greater than necessary to achieve the legitimate objectives of sentencing. The parties seem to disagree about the applicable standard of review, but we will apply an abuse-of-discretion standard because we have, on similar occasions, "[a]ssum[ed], favorably to the defendant, that the abuse of discretion standard applies . . . ." United States v. Ruiz-Huertas, 792 F.3d 223, 228 (1st Cir. 2015). With a total base offense level of 43 and a criminal history category of I, the resulting guidelines sentencing range is life. The district court explicitly considered Laureano-Pérez's age, number of dependents, education and work history, drug use, and prior state law violations. The district court explained that it imposed only 480 months because it had considered the sentences of two co-defendants as well as the letter from the prison psychologist detailing Laureano-Pérez's rehabilitation progress. This discussion satisfied the district court's procedural duty to consider the § 3553(a) factors. See United States v. Quiñones-Otero, 869 F.3d 49, 53 (1st Cir. 2017) ("The district court need not address every § 3553(a) factor individually in its explanation of the sentence."); United States v. Dixon, 449 F.3d 194, 205 (1st Cir. 2006) ("While a sentencing court must consider all of the applicable section 3553(a) factors, it is not required to address those factors, one by one, in some sort of rote incantation when explicating its sentencing decision."). Taking the totality of circumstances into account, we conclude that this sentence is substantively reasonable because it "rests on a 'plausible sentencing rationale' and embodies a 'defensible result.'" Id. at 228 (quoting United States v. Martin, 520 F.3d 87, 96 (1st Cir. 2008)).

**Affirmed.**

By the Court:

/s/ Margaret Carter, Clerk

cc:

Alan J. Black

Christopher L. Laureano-Perez

Julia Meconiates

Mariana E. Bauza Almonte

Cesar S. Rivera-Giraud

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