No. 17 –_____

IN THE

SUPREME COURT OF THE UNITED STATES

DAMIEN CASTILLO-MURION,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

Appendix A

United States v. Castillo-Murion

United States Court of Appeals for the Fifth Circuit

November 28, 2017, Filed

No. 17-10184 Summary Calendar

Reporter
2017 U.S. App. LEXIS 23984 *; 2017 WL 5891681

UNITED STATES OF AMERICA, Plaintiff-Appellee v. DAMIEN CASTILLO-MURION, also known as Hector Raul Chairez, Defendant-Appellant

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: **[*1]** Appeal from the United States District Court for the Northern District of Texas. USDC No. 4:16-CR-200-1.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Emily Baker Falconer, Assistant U.S. Attorney, James Wesley Hendrix, Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of Texas, Dallas, TX.

For DAMIEN CASTILLO-MURION, also known as Hector Raul Chairez, Defendant - Appellant: Brandon Elliott Beck, Federal Public Defender's Office, Lubbock, TX; Christopher Allen Curtis, Assistant Federal Public Defender, Federal Public Defender's Office, Fort Worth, TX.

Judges: Before KING, ELROD, and HIGGINSON, Circuit Judges.

Opinion

PER CURIAM:[*]

Damien Castillo-Murion appeals the 50-month sentence imposed following his guilty plea conviction for illegal reentry in violation of *8 U.S.C. § 1326*. The sentence represents an upward variance from the applicable guidelines range of 21-27 months. On appeal, Castillo-Murion first contends that his sentence is substantively unreasonable. Specifically, he asserts that the district court gave undue weight to his criminal history and failed to balance properly the sentencing factors set forth in *18 U.S.C. § 3553(a)*. He also argues that the extent of the variance is excessive.

We review claims that **[*2]** a sentence is substantively unreasonable, in light of the *18 U.S.C. § 3553(a)* factors, under an abuse of discretion standard. Gall v. United States, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007). The record confirms that the district court considered counsel's arguments and made an individualized assessment of the *§ 3553(a)* factors, determining that the seriousness and extensiveness of Castillo-Murion's criminal history, the need to deter future misconduct, and the need to protect the public outweighed Castillo-Murion's motives for returning to the United States and warranted an above-guidelines sentence. *See* Gall, 552 U.S. at 49-51; *§ 3553(a)(1), (2)(B), (C)*. Castillo-Murion has not shown that the court's focus on his criminal history failed to take into account "a factor that should have received significant weight," gave "significant weight to an irrelevant or improper factor," or represented "a clear error of judgment in balancing the sentencing factors." United States v. Smith, 440 F.3d 704, 708 (5th Cir. 2006).

Nor did the district court error in varying 23 months above the guidelines range's upper bound (from 27 months to 50 months). Indeed, we have upheld variances and departures greater than the increase to Castillo-Murion's sentence. *See* United States v. Jones, 444 F.3d 430, 433, 441-42 (5th Cir. 2006) (46- to 57-month guidelines range; 120-month sentence). He has failed to show that the district court's justification for the imposed **[*3]** sentence was insufficiently compelling. *See* Smith, 440 F.3d at 707.

Castillo-Murion also argues that *18 U.S.C. § 16(b)* is unconstitutionally vague and, therefore, none of his prior convictions should have been categorized as a crime of violence making it an aggravated felony under U.S.S.G. § 2L1.2(b)(1)(C). This claim is factually baseless as none of Castillo-Murion's prior convictions was categorized as an aggravated felony. Regardless, Castillo-Murion concedes that our precedent forecloses his argument. *See* United States v. Gonzalez-Longoria, 831 F.3d 670, 677-78 (5th Cir. 2016) (en banc), *petition for cert. filed* (Sept. 29, 2016) (No. 16-6259).

Finally, Castillo-Murion argues that his sentence violates his

[*] Pursuant to ***5TH CIR. R. 47.5***, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in ***5TH CIR. R. 47.5.4***.

due process rights, asserting that his sentence could not exceed the two-year maximum under *§ 1326(a)* because the indictment did not allege that he had a prior conviction that would trigger a sentencing enhancement under *§ 1326(b)*. He correctly concedes that this issue is foreclosed by *Almendarez-Torres v. United States, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998)*.

The judgment of the district court is AFFIRMED.

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Appendix B

United States District Court
Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA	§	
v.	§	Case Number: 4:16-CR-200-A(01)
DAMIEN CASTILLO-MURION, a/k/a "Hector Raul Chairez"	§	

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney J. Michael Worley. The defendant, DAMIEN CASTILLO-MURION, a/k/a "Hector Raul Chairez", was represented by Federal Public Defender through Assistant Federal Public Defender Jessica Graf.

The defendant pleaded guilty on September 16, 2016 to the one count indictment filed on August 10, 2016. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

Title & Section / Nature of Offense	Date Offense Concluded	Count
8 U.S.C. §§ 1326(a) and (b)(1)/(2) Illegal Reentry After Deportation	03/25/2016	1

As pronounced and imposed on February 3, 2017, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of $100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 50 months.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. The court imposed a term of supervised release because it will provide an added measure of deterrence and protection based on the facts and circumstances of this case.

Pursuant to 18 U.S.C. §3583(d), as a condition of supervised release, upon the completion of the sentence of imprisonment the defendant shall be surrendered by the Federal Bureau of Prisons to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not possess illegal controlled substances.

2. The defendant shall not commit another federal, state, or local crime.

3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.

4. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered at a rate of at least $10 per month.

5. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.

2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.

3. The defendant shall provide to the U.S. Probation Officer any requested financial information.

4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.

5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.

6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.

7. The defendant shall support his or her dependents and meet other family responsibilities.

8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.

9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.

10. The defendant shall refrain from excessive use of alcohol and shall 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 shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.

13. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.

14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.

15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 3rd day of February, 2017.

JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

____
____
____

Defendant delivered on _______________, 2017 to _______________________________
at ____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By ____________________________________
Deputy United States Marshal