

APPENDIX

716 Fed.Appx. 778

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 10th Cir. Rule 32.1. United States Court of Appeals, Tenth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Roland Donell ROSS, Defendant-Appellant.

Nos. 16-3334 and 16-3335

Filed November 29, 2017

Synopsis

Background: Defendant pleaded guilty in the United States District Court for the District of Kansas, D.C. No. 6:11-CR-10158-EFM-2, to brandishing a firearm during and in relation to a Hobbs Act robbery. Defendant appealed.

Holdings: The Court of Appeals, Carolyn B. McHugh, Circuit Judge, held that:

[1] unpreserved factual dispute over how probation officer calculated defendant's sentence if he had also been convicted of underlying Hobbs Act robbery charge could not satisfy plain error review, and

[2] any error in relying on erroneous calculation of what defendant's sentence would have been if he had also been convicted of underlying robbery was not plain error.

Affirmed.

West Headnotes (2)

[1] Criminal Law

⚡ Sentencing proceedings in general

The unpreserved factual dispute over how probation officer calculated an offense level

of 22, in presentence investigation report's (PSR) discussion of Sentencing Guidelines range for Hobbs Act robbery for which defendant was charged, but for which he did not plead guilty as part of agreement to plead guilty to other charged offense of brandishing a firearm during and in relation to the robbery, could not satisfy plain error review; without any findings from district court, Court of Appeals could not review the appropriateness of any applied enhancements without improperly speculating as to the basis of the PSR's calculation. 18 U.S.C.A. §§ 924(c), 1951.

Cases that cite this headnote

[2] Criminal Law

⚡ Sentencing proceedings in general

Even if presentence investigation report (PSR) incorrectly calculated what defendant's sentence would have been if he had also been convicted of underlying Hobbs Act robbery charge, and district court erred in relying on that erroneous calculation in fixing defendant's sentence for brandishing a firearm during and in relation to a Hobbs Act robbery, the error was not plain; defendant pointed to no decision from any court holding a sentencing court's reliance on an inaccurately calculated sentencing range for an offense other than the offense of conviction was error. 18 U.S.C.A. §§ 924(c), 1951.

Cases that cite this headnote

(D.C. No. 6:11-CR-10158-EFM-2) (D. Kansas)

Attorneys and Law Firms

James A. Brown, Jared S. Maag, Tanya J. Treadway, Office of the United States Attorney, District of Kansas, Topeka, KS, for Plaintiff-Appellee

Howard A. Pincus, Office of the Federal Public Defender, Districts of Colorado and Wyoming, Denver, CO, for Defendant-Appellant

Before BRISCOE, McHUGH, and MORITZ, Circuit Judges.

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Carolyn B. McHugh Circuit Judge

I. INTRODUCTION

Roland Ross appeals his sentence for one count of brandishing a firearm during and in relation to a Hobbs Act robbery, in violation of 18 U.S.C. § 924(c).¹ Mr. Ross was charged with both a § 924(c) firearm offense and an underlying robbery offense but, pursuant to a plea agreement, pleaded guilty to only the § 924(c) offense. At sentencing, the district court rejected the Guidelines sentence recommended by the prosecutor, instead choosing an upward variant sentence of 108 months. Mr. Ross argues the district court committed plain error by relying on a clearly erroneous Presentence Investigation Report (“PSR”) Guidelines calculation of what his sentence *would have been* if he had also been convicted of the underlying robbery charge. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

¹ Mr. Ross was also charged with a violation of his supervised release resulting from this offense. He initially appealed this sentence (No. 16-3334), but abandoned the challenge in his opening brief.

II. BACKGROUND

On July 1, 2016, a grand jury indicted Mr. Ross on one count of robbing a liquor store, in violation of 18 U.S.C. §§ 1951(a) and (b)(2), and one count of brandishing a firearm during and in relation to a Hobbs Act robbery, in violation of 18 U.S.C. § 924(c). Mr. Ross entered into a plea agreement with the government where he agreed to plead guilty to the § 924(c) brandishing count, and in return the government would dismiss the underlying robbery charge and recommend a sentence of 84 months.

Prior to Mr. Ross’s sentencing hearing, the Probation Office prepared a PSR that contained a description of the current offense and the associated Guideline sentencing recommendations. The PSR noted that “Chapter three (Adjustments) and Chapter four (Criminal History and Criminal Livelihood) do not” affect the sentencing *780 Guidelines computations for a § 924(c) offense. Instead, “[t]he guideline range for incarceration for this offense is the statutory minimum sentence of seven years (84 months).” Under the sentencing options section of the PSR, the Probation Office also evaluated what Mr. Ross’s sentence would have been if he had been convicted of the underlying robbery charge.

Had the defendant been convicted as charged in the Indictment, a guideline sentencing range would have been calculated for Count 1, the Robbery Count. Thus the provisions of § 2B3.1 would have been used. The total offense level for this count would have been 22 (assuming a three-point reduction for acceptance of responsibility), and with a criminal history category of IV, the guideline range would be 63 to 78 months. The seven (7) year minimum term (or 84 months) required for Count 2 would have run consecutive to a sentence in this range.

Mr. Ross made no relevant objection to the PSR and the district court “determine[d] that the presentence investigation report ... [was] accurate.”

In announcing Mr. Ross’s sentence, the court explained “the offense of the robbery itself require[d] an upward variance” and noted,

had [Mr. Ross] been convicted of the [robbery]² offense, he would have been facing a sentence of at least five years in that case in addition to the seven-year charge for brandishing. And I think it’s appropriate for me ... to factor [it] in my fashioning a sentence for this 924(c) offense....

The court then sentenced Mr. Ross to 108 months' imprisonment. Mr. Ross now appeals.

- ² The sentencing transcript contains a clerical error incorrectly referencing the "brandishing" offense.

III. DISCUSSION

When a criminal defendant challenges his sentence, we review for reasonableness. *United States v. Martinez*, 610 F.3d 1216, 1223 (10th Cir. 2010). "Reasonableness review has a procedural and substantive component." *Id.* "Procedural reasonableness focuses on whether the district court erred in calculating or explaining the sentence." *United States v. Halliday*, 665 F.3d 1219, 1222 (10th Cir. 2011) (internal quotation marks omitted). Several significant procedural errors have been identified by the Supreme Court, "including 'failing to calculate (or improperly calculating) the Guidelines range ... [and] selecting a sentence based on clearly erroneous facts.'" *United States v. Sayad*, 589 F.3d 1110, 1116 (10th Cir. 2009) (quoting *Gall v. United States*, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007)). Mr. Ross asserts only procedural error, arguing the district court unreasonably relied on the PSR's clearly erroneous calculation of the sentencing range for the robbery offense.

Because Mr. Ross failed to object to the PSR's calculation of his offense level at sentencing, we review for plain error. *See United States v. Black*, 830 F.3d 1099, 1110 (10th Cir. 2016). To succeed on plain error review, an appellant must show "(1) error, (2) that is plain, (3) which affects substantial rights, and (4) which seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v. Warren*, 737 F.3d 1278, 1285 (10th Cir. 2013) (citation omitted).

[1] To satisfy the first prong, Mr. Ross argues the PSR inaccurately calculated the total offense level of the underlying robbery offense. The PSR states, "[t]he total *781 offense level for [the robbery] count would have been 22 (assuming a three-point reduction for acceptance of responsibility) and with a criminal history category of IV, the guideline range would be 63 to 78 months." Beyond the three-level reduction for acceptance of responsibility, the report does not describe how an offense level of 22 was reached.

Mr. Ross argues that the total offense level calculation of 22 included a five-level enhancement for brandishing a gun that could not be applied in light of the § 924(c) charge of conviction. *See United States v. Blake*, 59 F.3d 138, 139–40 (10th Cir. 1995) ("[A] sentencing court cannot enhance a defendant's sentence for a robbery under the Guidelines by reason of his use of a firearm if the defendant has been separately convicted and is being sentenced under § 924(c) for using the firearm in the commission of the same robbery."). To support this calculation, he claims that none of the six other potential increases for offense specific characteristics applied and no upward adjustments were available under Chapter Three of the Guidelines. Because there is no combination of legally permissible enhancements which results in a total offense level of 22, after adjusting for the PSR's noted three-point acceptance of responsibility reduction, Mr. Ross argues the PSR was clearly erroneous. As such, the district court erred by relying on the resulting inaccurate Guidelines sentencing range to determine the extent of its variance on the § 924(c) sentence.

According to the government, however, it "is just as likely and plausible" the PSR could have reached a total offense level of 22 by beginning at a base level of 20, adding a two-level enhancement for Mr. Ross lying to the police about the identity of his accomplice under U.S.S.G § 3C1.1 and a three-level enhancement for committing the offense while on supervised release under § 3C1.3, and then subtracting the three-level reduction for acceptance of responsibility. Mr. Ross asserts that the government's alternative calculation is implausible because it contradicts other factual findings within the PSR. But, resolving factual disputes about the applicability of particular enhancements is an exercise of the district court's authority. Without any findings from the district court, we cannot review the appropriateness of any applied enhancements without speculating as to the basis of the PSR's calculation. *See United States v. Pena-Hermosillo*, 522 F.3d 1108, 1112 (10th Cir. 2008). Such speculation and conjecture is beyond the purview of this court and impermissibly invades the district court's exercise of its discretion. *See United States v. Labastida-Segura*, 396 F.3d 1140, 1143 (10th Cir. 2005).³

- ³ Despite Mr. Ross's attempt to characterize his challenge as a legal question, the issue ultimately turns on the factual question of how the Probation Office calculated an offense level of 22. Although we rest our

holding on other grounds, we note that Mr. Ross's claim also fails because unpreserved factual disputes—such as this—cannot satisfy plain error. See *United States v. Zhou*, 717 F.3d 1139, 1154 (10th Cir. 2013) (“[W]e have held under the plain error standard that failure to assert a factual dispute at sentencing waives the challenge because it prevented the probation officer from reviewing and the district court from resolving the fact issue.”); *United States v. Lewis*, 594 F.3d 1270, 1288 (10th Cir. 2010) (“[F]actual disputes regarding sentencing not brought to the attention of the district court do not rise to the level of plain error.”) (internal quotation marks omitted).

[2] Moreover, we need not resolve this conflict regarding the sentence that would have been available if Mr. Ross had also pleaded guilty to robbery. Even if it was calculated incorrectly, and the district court erred in relying on that erroneous calculation in fixing Mr. Ross's sentence, *782 any alleged error was not plain. “An error is plain if it is clear or obvious under current, well-settled law. In general, for an error to be contrary to well-settled law, either the Supreme Court or this court must have addressed the issue.” *United States v. DeChristopher*, 695 F.3d 1082, 1091 (10th Cir. 2012) (citation omitted). Mr. Ross cannot make that showing.

To be sure, a sentencing court must base its sentencing decision on an accurate calculation of the defendant's

Guidelines sentencing range for the offense of conviction. See *United States v. Archuleta*, 865 F.3d 1280, 1292 (10th Cir. 2017). Mr. Ross concedes, however, that the PSR correctly calculated the Guidelines sentencing range for the brandishing offense to which he pleaded guilty. He argues instead that we should extend the general principle requiring accuracy in the Guidelines range for the offense of conviction to also require that the sentencing court correctly calculate the sentences that would be available for any dismissed offense considered in arriving at the final sentence. But Mr. Ross has failed to point us to a single decision from any court that has held a sentencing court's reliance on an inaccurately calculated sentencing range for an offense other than the offense of conviction is error. This failure is fatal to his claim that the alleged error was plain. See *DeChristopher*, 695 F.3d at 1091.

IV. CONCLUSION

For the above reasons, we AFFIRM Mr. Ross's sentence.

All Citations

716 Fed.Appx. 778

14:30:23 1 anything additionally you'd like to say to me before I pass
14:30:26 2 sentence on this case, I'll certainly take into account your
14:30:29 3 earlier comments that you made a few moments ago. But if
14:30:32 4 there's anything additional you'd like to say, I'll be happy to
14:30:35 5 hear from you on them as well.

14:30:38 6 THE DEFENDANT: No.

14:30:41 7 THE COURT: All right. Thank you.

14:30:42 8 Well, the defendant pled guilty to a 924(c)
14:30:47 9 offense, to brandishing a firearm. Under the law, the statute
14:30:53 10 provides that for that offense he's facing a minimum term of
14:30:56 11 seven years, but a maximum of life. I don't know that I've
14:31:02 12 ever given -- in fact, I know that I have never given a life
14:31:06 13 sentence in a 924(c) case, and certainly that's not on the
14:31:10 14 books here.

14:31:11 15 The guidelines would recommend a sentence of seven
14:31:14 16 years for that offense. Mr. Ross did brandish a firearm. I'm
14:31:19 17 familiar with the distinctions the 924(c) makes between
14:31:23 18 possession, brandishing, and discharge of a firearm, and the
14:31:26 19 graduated minimum sentences that occur in that case. In this
14:31:35 20 case I find the offense of the robbery itself requires an
14:31:41 21 upward variance: The threatening the clerk with his life, the
14:31:48 22 violence that ensued, the clerk, of course, responded in a most
14:31:53 23 unexpected way and, obviously, some unexpected things occurred
14:32:01 24 in that attempted robbery, but none of those accrued to the
14:32:07 25 benefit of the defendant.

14:32:08 1 I find that, particularly as I look at -- well, I
14:32:13 2 looked at two things: one, I looked at the conduct. In
14:32:18 3 considering my sentence in this case, I looked at the conduct
14:32:22 4 in this case of asking the clerk if he was ready to die,
14:32:28 5 confronting him with guns, much more -- in my opinion, a much
14:32:33 6 more serious situation than a typical brandishing offense. I
14:32:38 7 look at then the fact that the defendant was also charged in
14:32:44 8 Count 1 with robbery. He's not pled to that. I'm not
14:32:49 9 sentencing him for that offense. But in a sort of a small
14:32:55 10 relevant conduct kind of a consideration, it seems to me
14:32:57 11 appropriate to consider the robbery offense, along with the
14:33:00 12 brandishing offense, in calculating the sentence here.

14:33:02 13 I note that, had he been convicted of the
14:33:06 14 brandishing offense, he would have been facing a sentence of at
14:33:11 15 least five years in that case in addition to the seven-year
14:33:15 16 charge for brandishing. And I think it's appropriate for me to
14:33:17 17 consider the robbery that occurred there and the violence that
14:33:23 18 they attempted to initiate, not anticipating that they would be
14:33:27 19 met with a rather unusual clerk, and to factor in in my
14:33:34 20 fashioning a sentence for this 924(c) offense the total conduct
14:33:39 21 that was involved there. And in factoring that in, I find that
14:33:43 22 an upward variance is appropriate because of the nature of the
14:33:46 23 violence, the attempted robbery, the issues that went on there.

14:33:49 24 As was noted earlier, I'm not factoring into this
14:33:52 25 sentence the defendant's conduct in the Butler County jail, as

14:33:55 1 I factored that into his sentence in the supervised release
14:33:58 2 case. But I am varying upward in this case based on the
14:34:02 3 incidents associated with that robbery. As reflected in the
14:34:07 4 charge, although he's not pled to it or been convicted of the
14:34:10 5 robbery count, and reflected to what went on and based on those
14:34:15 6 issues, I am proposing a tentative sentence of nine years,
14:34:20 7 which is 108 months, for his violation on the 924 offense.

14:34:25 8 Following that, I intend to place him on
14:34:27 9 supervised release for four years. I've not imposed a term of
14:34:31 10 supervised release in the other case, but the overall conduct
14:34:35 11 of Mr. Ross' background convinces me that he needs some
14:34:40 12 substantial period of supervised release. The law would allow
14:34:43 13 me to give him a sentence of up to five years, but frankly, if
14:34:46 14 any success is going to be achieved, it'll happen in four years
14:34:50 15 or not at all, so I don't intend -- or I don't find it
14:34:53 16 necessary to go to the full five-year sentence.

14:34:55 17 Again, he's not going to be required to pay a fine
14:35:02 18 but he will have to pay a special assessment on the count of
14:35:04 19 which he pled of a hundred dollars.

14:35:06 20 So that is my -- well, first, while he's on
14:35:10 21 supervised release, I intend to impose the mandatory and
14:35:12 22 special conditions of supervision set forth in the presentence
14:35:15 23 report. Drug testing and DNA collection are required by law
14:35:19 24 and will be imposed. The defendant's prohibited by federal law
14:35:22 25 from purchasing or possessing a firearm or ammunition as a

14:35:25 1 result of this conviction.

14:35:26 2 Mr. Ross, that's a lifetime prohibition. I
14:35:31 3 routinely have people in my court on the very charge that
14:35:33 4 you're here on now. And after you're released, if you again
14:35:37 5 even possess a firearm in the most peaceful or innocent of
14:35:40 6 intents, that'll be a federal violation, and for that you could
14:35:43 7 receive more time in prison. I would admonish you that federal
14:35:48 8 law enforcement takes those prohibitions seriously and it would
14:35:50 9 be in your best interests to do so as well.

14:35:52 10 Additionally, during his term of supervision, I'm
14:35:54 11 prohibiting him from possessing or purchasing any other
14:35:58 12 destructive device or dangerous weapon. Given his substance
14:36:01 13 abuse history, I'm imposing the special condition for drug
14:36:04 14 treatment, with alcohol abstinence required during his
14:36:07 15 supervised release because consumption of alcohol is
14:36:09 16 inconsistent with successful completion of a drug treatment
14:36:13 17 program.

14:36:15 18 During his supervision I'm ordering him to
14:36:18 19 participate in a cognitive behavioral program as well. I'm
14:36:21 20 going to require him to complete his GED while on supervised
14:36:24 21 release to improve his future employment prospects and to
14:36:28 22 assist with his rehabilitative efforts, and I am, of course,
14:36:31 23 imposing the search condition set forth in the presentence
14:36:33 24 report during his term of supervision to verify compliance and
14:36:37 25 for safety of the probation officer.

14:36:38 1 I think this sentence reflects the matters I'm
14:36:42 2 required to consider, both under 18 U.S.C. 3553(a) and under
14:36:47 3 the advisory guidelines. In considering particularly those
14:36:50 4 factors that I have to look at under 18 U.S.C. 3553(a), I do
14:36:54 5 think this upward variance is appropriate and well supported by
14:37:00 6 both Mr. Ross' background but also by the events of the
14:37:04 7 incident in question for which he was arrested. And I think
14:37:09 8 this sentence is sufficient but it is not greater than
14:37:12 9 necessary to reflect the seriousness of the offense and to
14:37:15 10 promote respect for the law and to provide just punishment.

14:37:19 11 I hope that this sentence will afford adequate
14:37:21 12 deterrence to future criminal conduct, and will protect the
14:37:25 13 public even after Mr. Ross' ultimate release from prison from
14:37:30 14 future crimes by him. This upward variance, as I noted, is not
14:37:34 15 based on his conduct while in custody, but based on the matters
14:37:37 16 related to the underlying offense.

14:37:40 17 That is the tentative sentence of the court in the
14:37:43 18 '16 case. Any objection to this sentence?

14:37:46 19 MR. WELCH: No, Your Honor.

14:37:47 20 MR. PRATT: Yes, Your Honor. Your Honor, I would
14:37:50 21 point out that Mr. Ross' codefendant Mr. Phillips was sentenced
14:37:54 22 in this court just the other day and received an 84-month
14:37:58 23 sentence. Their conduct was essentially the same in this case.
14:38:03 24 In fact, my review of the reports and of the audio of the
14:38:12 25 clerk's interview, he was not able to tell who initially said,

14:38:19 1 "Are you prepared to die? This is a robbery." He then
14:38:23 2 indicated that Mr. Ross did say, "You shot my partner, I'm
14:38:27 3 going to kill you," after Mr. Ross was on the ground,
14:38:30 4 eventually gave up. Interestingly, during that interview with
14:38:33 5 the police, the clerk and the officer talked about how Mr. Ross
14:38:43 6 begged to be let go, that he had kids, and eventually cried.
14:38:49 7 So I think --

14:38:51 8 THE COURT: And that makes him less culpable?

14:38:53 9 MR. PRATT: It doesn't, Your Honor. But what I'm
14:38:55 10 saying is that there's an unwarranted disparity here between
14:38:59 11 the actions of Mr. Ross and the actions of Mr. Phillips, which
14:39:03 12 were essentially the same except the clerk shot Mr. Phillips,
14:39:08 13 who then ran off to Kansas City, while Mr. Ross gave himself
14:39:12 14 up.

14:39:12 15 THE COURT: He did not give himself up. He was
14:39:15 16 held at gunpoint until law arrived.

14:39:17 17 MR. PRATT: Well --

14:39:18 18 THE COURT: That's not giving himself up.

14:39:19 19 MR. PRATT: He could have shot back and run off.
14:39:22 20 He chose to put his gun on a shelf.

14:39:24 21 THE COURT: After he had a gun held on him.

14:39:26 22 MR. PRATT: Well, Your Honor, I agree. But this
14:39:29 23 day and age people shoot back all the time. He gave himself
14:39:36 24 up. And I think that there's a disparity here, an unwarranted
14:39:41 25 disparity, based on the conduct of these two individuals who

14:39:44 1 committed essentially the exact same -- well, they did commit
14:39:48 2 the exact same crime at the exact same time.

14:39:55 3 And I understand that, you know, that the Court is
14:40:03 4 saying that the sentence is based on the conduct of the
14:40:08 5 offense. Well, if that's the case, then Mr. Phillips should be
14:40:12 6 getting nine years or should have gotten nine years as well.
14:40:15 7 Their conduct wasn't any different.

14:40:16 8 THE COURT: I agree that their conduct was not
14:40:18 9 different, but I'm required to consider, under 18 U.S.C.
14:40:22 10 3553(a), and I noted that I did consider, not only the conduct,
14:40:25 11 which I certainly found appalling, but also the background,
14:40:28 12 characteristics of the defendant himself, and those
14:40:30 13 characteristics and the trajectory that Mr. Ross' life was on
14:40:36 14 at the time of the commission of this offense, I felt,
14:40:39 15 warranted -- or I feel warrants the higher sentence. So your
14:40:46 16 objection's noted but it's overruled.

14:40:47 17 MR. PRATT: Thank you, Your Honor.

14:40:56 18 THE COURT: The court -- anything further?

14:41:00 19 MR. PRATT: No, Your Honor.

14:41:01 20 THE COURT: The court determines that the
14:41:03 21 presentence investigation report and previously stated findings
14:41:05 22 are accurate and I'm ordering those findings incorporated into
14:41:08 23 the following sentence: Pursuant to the Sentencing Reform Act
14:41:10 24 of 1984, it is the judgment of the court that the defendant
14:41:13 25 Roland Donell Ross is hereby sentenced to the custody of the

14:41:17 1 Bureau of Prisons for a term of 108 months or nine years, this
14:41:21 2 term to be consecutive to any other sentence imposed for
14:41:24 3 violation of supervised release previously by this court.

14:41:27 4 Following that term of imprisonment, the
14:41:30 5 defendant's placed on supervised release for a term of four
14:41:32 6 years. Within 72 hours of release from the custody of the
14:41:35 7 Bureau of Prisons, the defendant is to report to the probation
14:41:38 8 office in the district in which he is released. While on
14:41:41 9 supervised release, he's not to commit another federal, state,
14:41:43 10 or local crime; he's to comply with the standard conditions of
14:41:47 11 supervision that have been adopted by this court, as well as
14:41:49 12 the special and mandatory conditions of supervision set forth
14:41:52 13 in Part D of the presentence report.

14:41:54 14 The defendant's ordered to pay the United States a
14:41:56 15 special assessment of \$100 to the Crime Victims Fund pursuant
14:41:59 16 to 18 U.S.C. 3013. That assessment is due immediately and may
14:42:04 17 be satisfied while in Bureau of Prisons custody. No fine is
14:42:08 18 imposed.

14:42:11 19 I'm required to advise both sides of their
14:42:13 20 respective rights to appeal this sentence and conviction. Any
14:42:16 21 appeal taken is subject to 18 United States Code § 3742, but
14:42:22 22 it's also subject to any waiver of appeal rights in this case.
14:42:25 23 I'd advise the defendant that it's your right to appeal this
14:42:28 24 sentence and conviction only to the extent you've not waived
14:42:30 25 that right in the plea agreement, but any appeal rights you may

14:42:33 1 have remaining following that waiver you will still lose if you
14:42:36 2 do not timely file a notice of appeal in the district court.
14:42:38 3 Rules of appellate procedure give you 14 days after the entry
14:42:41 4 of judgment in which to file your notice of appeal. If you
14:42:44 5 request, the clerk of the court will immediately prepare and
14:42:46 6 file a notice of appeal in your behalf, and if you cannot pay
14:42:49 7 the costs of appeal, you can apply for leave to appeal in forma
14:42:51 8 pauperis.

14:42:52 9 That is the judgment and sentence of the court.
14:42:54 10 The defendant's remanded to the custody of the marshals pending
14:42:57 11 designation by the Bureau of Prisons of an appropriate
14:43:00 12 facility.

14:43:00 13 Do you have a requested recommendation regarding
14:43:02 14 placement, Mr. Pratt?

14:43:04 15 MR. PRATT: I don't believe so, Your Honor.

14:43:06 16 THE DEFENDANT: Huh-uh. (Shaking head.)

14:43:07 17 MR. PRATT: No, Your Honor.

14:43:07 18 THE COURT: Mr. Welch, you have a motion to make.

14:43:09 19 MR. WELCH: Your Honor, at this time we'd move to
14:43:11 20 dismiss Count 1 of the indictment.

14:43:13 21 THE COURT: That motion's granted. Count 1 of
14:43:14 22 this is dismissed. Is there anything else we need to
14:43:17 23 take up regarding these matters?

14:43:18 24 MR. WELCH: No, Your Honor.

14:43:18 25 MR. PRATT: No, Your Honor. Thank you.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

February 20, 2018

Scott S. Harris
Clerk of the Court
(202) 479-3011

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U.S. COURT OF APPEALS
10TH CIRCUIT
2018 FEB 26 AM 11:47

Clerk
United States Court of Appeals for the Tenth
Circuit
Byron White Courthouse
1823 Stout Street
Denver, CO 80257

Re: Roland Donell Ross
v. United States
Application No. 17A882
(Your No. 16-3334, 16-3335)

Dear Clerk:

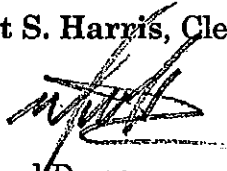
The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Sotomayor, who on February 20, 2018, extended the time to and including April 30, 2018.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by


Michael Duggan
Case Analyst