

United States Court of Appeals
for the Fifth Circuit

No. 22-20483
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 23, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JERMAINE DESHAN WEST,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CR-355-1

Before KING, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Jermaine Deshan West pleaded guilty to one count of conspiring to possess with intent to distribute 500 grams or more of methamphetamine, 500 grams or more of cocaine, and hydrocodone and oxycodone; four counts of aiding and abetting possession of a mixture and substance containing a detectable amount of cocaine, with intent to distribute, within 1000 feet of a

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

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high school; one count of possessing with intent to distribute 500 grams or more of methamphetamine; one count of possessing with intent to distribute a mixture or substance containing a detectable amount of hydrocodone; and three counts of aiding and abetting possession of a mixture and substance containing a detectable amount hydrocodone and oxycodone with intent to distribute. West received a within-guidelines sentence of a total of 280 months of imprisonment, to be followed by six years of supervised release. On appeal, West argues that the district court incorrectly calculated his offense level under the Sentencing Guidelines. He further contends that the district court's reliance on the methamphetamine Guidelines rendered his within-guidelines sentence substantively unreasonable.

West challenges the district court's application of the four-level sentencing enhancement for being a leader or organizer pursuant to U.S.S.G. § 3B1.1(a). Because West preserved his challenge in the district court, we review de novo the 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 record supports the application of § 3B1.1(a). *See United States v. Sims*, 11 F.4th 315, 325 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 827 (2022). Despite West's argument that he was not a leader or organizer because he did not own or operate any of the clinics or pharmacies involved in the drug trafficking, the district court could reasonably infer from the findings in the presentence report (PSR) that West was a leader or organizer in the criminal activity to support application of a four-level sentencing enhancement. *See United States v. Caldwell*, 448 F.3d 287, 290 (5th Cir. 2006); *see also* § 3B1.1, comment. (n.4). West presented no rebuttal evidence indicating that any of the facts in the PSR were inaccurate or materially untrue. *See Caldwell*, 448 F.3d at 290. West fails to demonstrate that the district court's factual finding was not "plausible in light of the record as a whole." *Id.*

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Finally, West preserved his challenge to the substantive reasonableness of his sentence, *see Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766 (2020), and our review is for abuse of discretion, *Gall v. United States*, 552 U.S. 38, 49-50 (2007). Because West's sentence of 280 months of imprisonment is within the properly calculated guidelines range, it is presumptively reasonable. *See United States v. Campos-Maldonado*, 531 F.3d 337, 338 (5th Cir. 2008). We have rejected West's argument that a within-guidelines sentence is substantively unreasonable because the applicable methamphetamine Guideline lacks an empirical basis. *See United States v. Lara*, 23 F.4th 459, 486 (5th Cir. 2022), *cert. denied*, 142 S. Ct. 2790 (2022); *see also United States v. Mondragon-Santiago*, 564 F.3d 357, 366-67 (5th Cir. 2009); *United States v. Duarte*, 569 F.3d 528, 530-31 (5th Cir. 2009). In addition, he fails to rebut the presumption that his sentence is reasonable. *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009).

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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June 23, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

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

No. 22-20483 USA v. West
USDC No. 4:20-CR-355-1

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

Christina Rachal

By:

Christina C. Rachal, Deputy Clerk

Enclosure(s)

Ms. Carmen Castillo Mitchell

Mr. John A. Reed

Mr. Alan Winograd