

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

June 14, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

URIEL FLORENTINO HERNANDEZ,

Defendant - Appellant.

No. 22-2059
(D.C. No. 2:21-CR-01950-MIS-1)
(D. N.M.)

ORDER AND JUDGMENT*

Before **HARTZ, SEYMOUR,** and **MATHESON,** Circuit Judges.

HARTZ, Circuit Judge.

Defendant Uriel Florentino Hernandez appeals his 46-month sentence imposed by the United States District Court for the District of New Mexico on his conviction of conspiracy to transport illegal aliens. The only issue on appeal is whether the district court plainly erred by failing to explain the reasons for the sentence and to consider and weigh the factors set forth in 18 U.S.C. § 3553(a). Exercising

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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.

jurisdiction under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291, we affirm Mr. Hernandez's sentence.

I. BACKGROUND

In September 2021 Mr. Hernandez picked up six undocumented aliens and their foot guide (also an undocumented alien) near Hachita, New Mexico, to drive them to Albuquerque, New Mexico. The six crammed into the back row of his truck (intended to seat only three passengers), and the guide sat in the front seat. When Mr. Hernandez noticed he was being followed by United States Border Patrol Agents, he panicked and sped away, leading the agents on a chase that ended when he entered a construction zone and rear-ended a semi-truck. At the time of the crash, Mr. Hernandez was on his cellphone with the mother of his children.

Mr. Hernandez suffered minor injuries and the guide fractured his nasal bone and two ribs. Three of the rear passengers were also injured—one was taken to a local hospital for chest pain and two were airlifted to a regional trauma center. Mr. Hernandez was charged by information with one count of conspiracy to transport illegal aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I), and he pleaded guilty with no plea agreement.

The presentence investigation report (PSR) calculated a guideline range of 37 to 46 months' incarceration. This range reflected enhancements for intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person, the number of unlawful aliens being transported, and the serious injuries suffered by two of the aliens. The range also reflected Mr. Hernandez's criminal

history, which included convictions for drunk driving, automobile burglary, and drug possession. Mr. Hernandez requested a downward departure and sentence of 12 months and one day, based on his lack of guidance as a child (his mother was deported when he was in the second grade, his father abandoned the family, and he lived in foster care for five years before his grandmother took custody) and his need for substance-abuse treatment. The Government recommended a low-end guideline-range sentence of 37 months' incarceration based on consideration of the § 3553(a) factors.

At the outset of the sentencing hearing the district court announced that it had reviewed the PSR, Mr. Hernandez's sentencing request, and the Government's response. Mr. Hernandez did not object to the PSR. After the court stated that it expected to give Mr. Hernandez a 46-month sentence "based on his prior convictions and his driving," R., Vol. IV at 3, it heard from the parties. The Government agreed that a high-end sentence would be appropriate, Mr. Hernandez's counsel reiterated his arguments for a downward departure or variance, and Mr. Hernandez addressed the court. The court imposed a sentence of 46-months' imprisonment and a two-year term of supervised release, providing the following explanation:

The Court adopts the Presentence Report's factual findings. It's considered the Sentencing Guideline applications and the factors set forth in 18 U.S.C. 3553(a). The Offense Level is 17 and the Criminal History Category is IV, establishing a range of 37 to 46 months.

The Court notes the defendant conspired with others to transport six undocumented people for financial gain and that the defendant created a substantial risk of death or serious bodily injury by transporting all of the undocumented people in the back seat of a Dodge RAM truck that was only

meant to safely seat three passengers; fleeing from Border Patrol agents at a high rate of speed over multiple roads and colliding into the back of a semi-truck in a construction zone. As a result of the accident, three of the undocumented people sustained injuries and two had to be airlifted to a hospital in El Paso, Texas.

Id. at 6–7. The court also recommended Mr. Hernandez for the Residential Drug Abuse Program (RDAP), which, on completion, could reduce his sentence by up to one year; and because of Mr. Hernandez’s lack of financial resources, the court declined to impose a fine and did not require him to pay the \$5,000 assessment under the Justice for Victims of Trafficking Act.

II. DISCUSSION

On appeal Mr. Hernandez complains that the sentencing hearing lasted only 12 minutes and argues that the district court procedurally erred “by failing to adequately explain its reasoning for imposing the sentence it did and by failing to explain its consideration and application of the factors under § 3553(a).” *Aplt. Br.* at 6. Because Mr. Hernandez did not raise these objections below, we review for plain error. *See United States v. Mendoza*, 543 F.3d 1186, 1190 (10th Cir. 2008). Under the plain-error standard we reverse only if the district court committed “(1) error, (2) that is plain, (3) which affects [the defendant’s] substantial rights and (4) which seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (internal quotation marks omitted).

There is no error, much less plain error, in the district court’s explanation of Mr. Hernandez’s sentence. As we have written:

Regarding the district court's duty to adequately explain the chosen sentence, the sentencing judge should set forth enough to satisfy the appellate court that he or she has considered the parties' arguments and has a reasoned basis for exercising his or her own legal decisionmaking authority. When imposing a within-Guidelines sentence, as the court did here, it must provide only a general statement of its reasons, and need not explicitly refer to either the § 3553(a) factors or respond to every argument for leniency that it rejects in arriving at a reasonable sentence.

United States v. Sanchez-Leon, 764 F.3d 1248, 1262 (10th Cir. 2014) (citations, brackets, and internal quotation marks omitted). The district court met this standard. It explained that it imposed a high-end guideline sentence of 46 months based on Mr. Hernandez's reckless actions in committing the offense—which caused serious injuries—and based on his criminal history. And the court responded to Mr. Hernandez's arguments for leniency and need for substance-abuse treatment by recommending him for RDAP. It provided a general statement of its reasons for the within-guidelines sentence, as is required, and did not procedurally err. The sentencing court "is not required to consider individually each factor listed in § 3553(a)," nor do we "demand that the [it] recite any magic words to show that it fulfilled its responsibility to be mindful of the factors that Congress has instructed it to consider." *United States v. Rines*, 419 F.3d 1104, 1107 (10th Cir. 2005) (internal quotation marks omitted). Although the sentencing hearing was brief, the court did not cut short any presentation by a party; and Mr. Hernandez does not explain why more time was needed for the hearing.

III. CONCLUSION

We **AFFIRM** the judgment below.

Entered for the Court

Harris L Hartz
Circuit Judge