FILED
United States Court of Appeals
Tenth Circuit

September 6, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL ALBERTO GONZALEZ-MEZA,

Defendant - Appellant.

No. 22-6212
(D.C. No. 5:15-CR-00186-D-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **KELLY, AND MORITZ,** Circuit Judges.

District courts generally can't modify sentences after they're imposed. 18 U.S.C. § 3582(c); *Dillon v. United States*, 560 U.S. 817, 819 (2010). An exception exists when a defendant shows extraordinary and

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* The parties do not request oral argument, and we conclude that it's unnecessary. So we have decided the appeal based on the record and the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

compelling circumstances. 18 U.S.C. § 3582(c)(1)(A). Upon such a showing, the district court has discretion to modify the sentence.

The defendant, Mr. Manuel Alberto Gonzalez-Meza, asked the district court to exercise this discretion. The court had imposed a 192-month sentence for drug crimes, and Mr. Gonzalez-Meza urged a sentence reduction based in part on his medical condition. The district court denied the request, and Mr. Gonzalez-Meza appeals.

Though he appeals, he states that the judgment itself was not wrong. This statement creates a potential issue involving appellate jurisdiction, for we ordinarily have jurisdiction only to consider the judgment itself (rather than the underlying reasoning). *McClung v. Silliman*, 19 U.S. (6 Wheat.) 598, 603 (1821); *see Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984) (stating that because we review judgments rather than opinions, we must determine whether the district court's legal error had led to an erroneous judgment).

But Mr. Gonzalez-Meza is pro se, so we liberally construe his appeal brief. *de Silva v. Pitts*, 481 F.3d 1279, 1283 n.4 (10th Cir. 2007). In that brief, he combines his statement on the correctness of the judgment with a request for remand, and he argues that the district court failed to address some of his medical records and a recent Supreme Court case (*Concepcion v. United States*, 142 S. Ct. 2389 (2022)). Liberally construed, Mr. Gonzalez-Meza's appeal brief appears to seek either a remand or reversal.

So we consider his request for a remand and his criticism of the reasons given by the district court for denying his request for a sentence reduction.

Of course, the district court can't be faulted for failing to consider evidence that hadn't been presented. *See United States v. Faunce*, 66 F.4th 1244, 1254 (10th Cir. 2023) ("We cannot fault the district court for failing to consider data that hadn't been presented."); *accord United States v. Rodriguez*, 858 F.3d 960, 963 (5th Cir. 2017) ("The district court couldn't have abused its discretion by failing to consider facts not presented."). But even without an error, the appeals court may be able to remand the proceedings to consider new evidence. 28 U.S.C. § 2106 (stating that an appellate court may remand a case for "such further proceedings to be had as may be just under the circumstances"). So we review Mr. Gonzalez-Meza's challenge to the district court's ruling for an abuse of discretion. *United States v. Hemmelgarn*, 15 F.4th 1027, 1031 (10th Cir. 2021).

The court addressed Mr. Gonzalez-Meza's weight, hypertension, and vulnerability to COVID-19. In challenging the district court's ruling, Mr. Gonzalez-Meza doesn't say what medical records the district court failed to consider. So we conclude that the district court didn't abuse its discretion in evaluating Mr. Gonzalez-Meza's medical records.

Mr. Gonzalez-Meza also complains that the court didn't discuss *Concepcion v. United States,* 140 S. Ct. 2389 (2022). In *Concepcion*, the Supreme Court held that district courts could consider intervening changes

in the law or facts when deciding whether to reduce a sentence. 142 S. Ct. at 2404.

Given Mr. Gonzalez-Meza's citation of *Concepcion,* we assume that he is arguing that the district court failed to consider some intervening factual or legal development. But he doesn't identify an intervening factual or legal development. So we have no way to meaningfully review the alleged disregard of some intervening factual or legal development.

We thus affirm the denial of Mr. Gonzalez-Meza's motion to modify his sentence.[1]

Entered for the Court

Robert E. Bacharach
Circuit Judge

[1] Though we affirm the dismissal, we grant the defendant's motion for leave to proceed in forma pauperis.