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United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 13, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 25-6101

ERNESTO CONILL-PEREZ,

Defendant - Appellant.

Appeal from the United States District Court
for the Western District of Oklahoma
(D.C. No. 5:24-CR-00427-SLP-1)

John T. Carlson of Ridley McGreevy & Winocur, Denver, Colorado, for Defendant-Appellant.

Matthew P. Anderson, Assistant United States Attorney (Robert J. Troester, United States Attorney, with him on the brief), Oklahoma City, Oklahoma, for Plaintiff-Appellee.

Before **PHILLIPS**, **McHUGH**, and **MORITZ**, Circuit Judges.

MORITZ, Circuit Judge.

Ernesto Conill-Perez challenges his 180-month sentence for possessing fentanyl with intent to distribute. He argues that the district court erred by applying a two-level enhancement for maintaining a premises for the purpose of manufacturing or distributing controlled substances (the stash-house enhancement) and assigning

three criminal-history points for a prior sentence that arose from a 1996 conviction. We agree that the stash-house enhancement doesn't apply on these facts, which show that although Conill-Perez "possessed" the hotel room for several hours, he did not "maintain" it: there was no evidence he ever entered or exited the room during that short time, and officers found no evidence of drug-trafficking during the search of the room. Under these circumstances, Conill-Perez had little, if any, control over the premises, and the district court erred in applying the enhancement. But the district court did not plainly err in assessing three criminal-history points for Conill-Perez's prior sentence. We thus affirm in part, reverse in part, and remand for resentencing.

Background¹

The events recounted here all occurred on September 12, 2024. Conill-Perez, acting at the direction of an unnamed individual, traveled from Miami, Florida, to Oklahoma City, Oklahoma, to distribute controlled substances. Sometime after 3:30 p.m., Conill-Perez met someone in a restaurant parking lot, entered their vehicle, and exited shortly after. That someone turned out to be a confidential source with the Drug Enforcement Administration (DEA), who later provided DEA agents with the goods received from Conill-Perez: four individually wrapped packages, each containing 1,000 round, blue pills marked "M-30." R. vol. 2, 29 (sealed).

After exiting the vehicle of the confidential source, Conill-Perez entered a

¹ Unless otherwise noted, we take these undisputed facts from the presentence investigation report (PSR), which the district court adopted as its own findings. *See United States v. Copus*, 110 F.3d 1529, 1535 (10th Cir. 1997) (noting we accept "district court's factual findings for sentencing unless they are clearly erroneous").

vehicle driven by E.B. The pair drove to a Country Inn and Suites and “entered the hotel lobby carrying luggage.” *Id.* (sealed). At approximately 5:15 p.m., Conill-Perez left the Country Inn and walked toward a different hotel. In that hotel’s parking lot, Conill-Perez entered a Nissan, exited moments later, and walked back toward the Country Inn. The Nissan exited the parking lot and was stopped by a state narcotics agent, who learned that Conill-Perez gave the driver 1,000 M-30 pills.

Separately, law enforcement observed E.B. drive away from the Country Inn. They conducted a traffic stop and found “marijuana vape pens and a few bags of luggage.” *Id.* (sealed). The record doesn’t reveal the precise timing of E.B.’s departure and the resulting traffic stop.

Back at the Country Inn (and also without a precise time in the record), DEA agents spoke with hotel staff to determine whether E.B. and Conill-Perez were renting a room; they learned that E.B. rented a room in his name. However, “front[-]desk staff provided agents with a piece of paper that had both Conill[-Perez’s] and E.B.’s names on it, along with room number 210.” *Id.* (sealed).

The agents then spotted Conill-Perez entering the lobby with a duffel bag. It’s not clear from the record whether Conill-Perez was returning from the parking lot next door or coming back through the lobby from one of the hotel rooms, but when the officers approached him, he ran out of the hotel and tossed the duffel bag into the pool area of a neighboring hotel.

Agents caught and arrested Conill-Perez and recovered the bag, which held packages of M-30 pills. Laboratory testing revealed that these pills and the pills sold

to the confidential source (but not the pills found in the Nissan) contained a fentanyl analogue. Conill-Perez admitted to agents that he traveled to Oklahoma City to distribute drugs and that E.B. assisted him with renting the room because he could not rent the room himself. But a DEA agent later testified that a search of room 210 turned up no evidence of drug trafficking: no drugs, no drug paraphernalia, and no large amounts of cash.

A grand jury indicted Conill-Perez on one count of possession of fentanyl with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). Conill-Perez pleaded guilty without a plea agreement.

Conill-Perez's PSR set his total offense level at 35, which included a two-level enhancement under the United States Sentencing Guidelines (U.S.S.G. or the Guidelines) for maintaining a stash house. *See* U.S.S.G. § 2D1.1(b)(12). The PSR also calculated a criminal-history score of seven, which included three points for a 1996 Florida conviction. With a criminal-history score of seven, the PSR set Conill-Perez's criminal-history category at IV, which combined with his total offense level for a sentencing range of 235 to 293 months.

Conill-Perez challenged the stash-house enhancement both before and during his sentencing hearing. The district court overruled the objections, but it did reduce Conill-Perez's criminal-history score by one (for reasons not relevant here), resulting in a criminal-history category of III and a Guidelines range of 210 to 262 months. The district court ultimately varied downward and sentenced Conill-Perez to 180 months and five years of supervised release.

Conill-Perez appeals.

Analysis

Conill-Perez contends that the district court erred in applying the stash-house enhancement. He also disputes the district court’s assessment of three criminal-history points for his prior sentence stemming from the 1996 conviction. We consider each point in turn.

I. Stash-House Enhancement

In this sentencing-enhancement challenge, “we review legal questions de novo and factual findings for clear error.” *United States v. Day*, 135 F.4th 1248, 1252 (10th Cir. 2025) (quoting *United States v. Montano*, 109 F.4th 1275, 1280 (10th Cir. 2024)). “Whether the facts found by the district court are sufficient to warrant an enhancement is reviewed de novo.” *Id.* (quoting *Montano*, 109 F.4th at 1280).

The Guidelines direct courts to add two offense levels if “the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance.” § 2D1.1(b)(12). The district court applied this enhancement based on these facts from the PSR: Conill-Perez entered and exited the hotel; Conill-Perez told agents that he traveled to Oklahoma City to distribute the pills and needed E.B.’s assistance in renting the room; and a hotel clerk produced a piece of paper listing Conill-Perez’s and E.B.’s names with a room number. On appeal, Conill-Perez argues that these facts do not show he either “maintained” the hotel room or did so ““for the purpose of” distributing drugs.” *Aplt. Br. 8* (quoting § 2D1.1(b)(12)).

We begin—and ultimately end—with the maintenance inquiry. “The

word *maintain* is not defined in § 2D1.1(b)(12),” but that guideline’s “authoritative” commentary provides helpful detail. *Day*, 135 F.4th at 1252. The commentary lists two particularly relevant factors: “whether the defendant held a possessory interest in (e.g., owned or rented) the premises and . . . the extent to which the defendant controlled access to, or activities at, the premises.” § 2D1.1 cmt. n.17. Additionally, we “look to judicial decisions interpreting [§ 2D1.1’s] statutory counterpart, 21 U.S.C. § 856(a)(1), which makes it unlawful to ‘knowingly maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance.’” *Day*, 135 F.4th at 1252 (cleaned up). Those decisions consider “acts evidencing such matters as control, duration, acquisition of the site, renting or furnishing the site, repairing the site, supervising, protecting, supplying the food to those at the site, and continuity.” *Id.* at 1252–53 (cleaned up) (quoting *United States v. Verners*, 53 F.3d 291, 296 (10th Cir. 1995)).

We recently applied these principles in *Day*, which involved a defendant using a short-term rental home to distribute fentanyl pills. *Id.* at 1250. We affirmed the district court’s application of the stash-house enhancement, finding it irrelevant that the property was rented in someone else’s name and that the defendant did not perform general upkeep of the property. *Id.* at 1254–55, 1257. Instead, we emphasized the defendant’s extensive control over the property for a ten-day period. *Id.* at 1255, 1257. Specifically, he stored both his personal belongings and items associated with drug-trafficking (narcotics, firearms, ammunition, digital scales, and currency) at the property, “came and went as he pleased” from the property, slept at

the property, and was the only occupant of the property. *Id.* at 1253 (quoting *Verners*, 53 F.3d at 296).

The government suggests that *Day* supports applying the enhancement here because it stands for the proposition that a defendant can maintain a premises even if the premises is rented in someone else's name. And to be sure, the evidence here showed that E.B. rented the hotel room for Conill-Perez. In the government's view, "Conill-Perez's actual possession of the hotel room is sufficient for a finding that he 'maintained' the hotel room." Aplee. Br. 19. But the government points to no authority that supports its view that mere possession of a hotel room, without accompanying evidence of control, is sufficient.

And the evidence of control and duration here pales in comparison to the evidence presented in *Day*. Unlike in *Day*, there was no evidence that Conill-Perez stored controlled substances, personal effects, or any other items in the hotel room. Nor was there any evidence that Conill-Perez even entered or exited the room itself, much less occupied or slept at the property. At best, officers saw Conill-Perez entering the hotel lobby with luggage. And to the extent that we can infer that Conill-Perez occupied the room at all, it was for a matter of mere hours. *Cf. Day*, 135 F.4th at 1255 (declining to decide whether four days would be too short because ten was plenty in light of extensive evidence of control). Indeed, although the government invokes a string cite from *Day* for the proposition that courts routinely apply this enhancement to hotel rooms, those cases included far more evidence of control than we have here. *See, e.g., United States v. Owens*, No. 21-3898, 2023 WL 2127334, at

*1 (8th Cir. Feb. 21, 2023) (unpublished) (defendant “lived” at the premises); *United States v. Hill*, No. 22-5274, 2023 WL 152474, at *3 (6th Cir. Jan. 11, 2023) (unpublished) (defendant “slept, bathed, hung out with friends, and stored his clothes, drugs, safe, and cash in the room” and “refused to admit hotel staff” to the room); *United States v. Hepburn*, 776 F. App’x 649, 650 (11th Cir. 2019) (“[E]vidence showed that [the defendant] had a possessory interest in the hotel rooms and controlled who came to his hotel room and what activities went on there.”). We thus conclude that Conill-Perez’s brief possession, accompanied by little to no evidence of control, did not constitute “maintain[ing] a premises.” § 2D1.1(b)(12). Under these circumstances, the district court erred in applying the stash-house enhancement.²

II. Criminal-History Score

Turning to Conill-Perez’s challenge to his criminal-history score, the parties agree that we review for plain error because he did not raise the objection below. *See United States v. Harbin*, 56 F.4th 843, 845 (10th Cir. 2022). Under that standard, Conill-Perez must establish the presence of “(1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (quoting *United States v. Archuleta*, 865 F.3d 1280, 1290 (10th Cir. 2017)).

The Guidelines instruct district courts to add three points to a defendant’s

² Because we conclude that Conill-Perez did not maintain the hotel room, we do not reach whether any such maintenance was “for the purpose of manufacturing or distributing a controlled substance.” § 2D1.1(b)(12).

criminal-history score “for each prior sentence of imprisonment exceeding one year and one month.” U.S.S.G. § 4A1.1(a). However, some prior sentences do not warrant a three-point increase, including those “imposed more than [15] years prior to the defendant’s commencement of the instant offense[,] . . . unless the defendant’s incarceration extended into this [15]-year period.” *Id.* cmt. n.1; *see also* U.S.S.G. § 4A1.2(e)(1) (defining “applicable time period” for prior sentence “exceeding one year and one month” (cleaned up)).

When, as here, a prior sentence of imprisonment results from a revocation of probation, the Guidelines provide two instructions for determining whether the prior sentence requires a three-point increase in a defendant’s criminal-history score. First, a court must “add the original term of imprisonment to any term of imprisonment imposed upon revocation” and use “[t]he resulting total” to determine the length of the sentence of imprisonment for purposes of § 4A1.1. § 4A1.2(k)(1). Then, in deciding whether this combined sentence is within the 15-year lookback period, a court must use one of the following (as relevant here): “in the case of an adult term of imprisonment totaling more than one year and one month, the date of last release from incarceration on such sentence” or “in any other case, the date of the original sentence.” § 4A1.2(k)(2).

The government argues that the plain language of these Guidelines supports the district court’s decision to add three criminal-history points based on Conill-Perez’s probation-revocation sentence arising from his 1996 conviction. It explains that under § 4A1.2(k)(1), the district court correctly added Conill-Perez’s 46-month

revocation sentence to his original term of imprisonment, which the government treats here as zero years, since it was a probation sentence. The government next points out that because the combined sentence exceeds one year and one month, the next question is whether it falls within the lookback period. *See* § 4A1.1 cmt. n.1; § 4A1.2(e). And the government concludes that it does because Conill-Perez’s “date of last release from incarceration on such sentence”—in or after 2014—was within the lookback period, which extends to September 2009. § 4A1.2(k)(2)(A); § 4A1.2(e)(1). For these reasons, the government contends that the district court did not err in assessing three criminal-history points for the probation-revocation sentence arising from the 1996 conviction. *See United States v. Coleman*, 9 F.3d 1480, 1485 (10th Cir. 1993) (applying § 4A1.2(k) to count old conviction as predicate offense for career-offender purposes where “the total term of imprisonment exceed[ed] one year and one month, *and* the defendant’s date of last release from incarceration on this sentence [wa]s within the [15]-year time period”).

Conill-Perez raises two challenges to this analysis. Despite some facial appeal, neither establishes a *plain* error. First, he argues that his original probationary sentence was not a “term of imprisonment” and thus the district court could not add the revocation sentence to the probationary sentence. For support, he points us to the Guidelines definition of “sentence of imprisonment” as “a sentence of incarceration.” § 4A1.2(b)(1). He also directs us to § 4A1.2(k)’s commentary, which implicitly acknowledges that there may not be an original term of imprisonment when adding a revocation term to an original term: “the sentence given upon revocation should be

added to the original sentence of imprisonment, *if any*, and the total should be counted as if it were one sentence.” § 4A1.2 cmt. n.11 (emphasis added). From this, Conill-Perez surmises that the mathematical operation contemplated by § 4A1.2(k)(1) can’t occur when there’s no original sentence of imprisonment.

But as the government suggests, it’s possible to conduct addition with the number zero standing in for the absence of an original prison term. Indeed, some courts applying § 4A1.2(k)’s language have done just that, treating probationary sentences as a term of imprisonment for zero years. *See United States v. Wagner*, 429 F. App’x 596, 601 (6th Cir. 2011).³ And at least one court has found Conill-Perez’s argument insufficient to establish *plain error*. *See United States v. Woods*, 799 F. App’x 284, 285–86 (5th Cir. 2020) (per curiam) (finding argument that probationary sentence was not original term of imprisonment within meaning of § 4A1.2(k) did not “constitute clear or obvious error”).⁴

³ We cite this and other unpublished cases for their persuasive authority.

⁴ Conill-Perez also points to *United States v. Stuart*, 1 F.4th 326 (4th Cir. 2021), and *United States v. Edwards*, 128 F.4th 562 (4th Cir. 2025), for support, but neither case aids him. In *Stuart*, the court observed that § 4A1.2(k)(1) didn’t apply because the defendant “received only one sentence for the . . . [o]ffense, which was originally suspended, but later activated.” 1 F.4th at 331. In *Edwards*, the Fourth Circuit clarified that *Stuart* involved a situation where no court could combine an original term of imprisonment with a probation-revocation sentence under § 4A1.2(k) because the defendant in *Stuart* “did not receive an original prison term of any kind . . . ; his imprisonment was suspended in its entirety.” *Edwards*, 128 F.4th at 566 n.4. Unlike the *Stuart* defendant, Conill-Perez received separate sentences: a probationary sentence and a probation-revocation sentence. Neither *Stuart* nor *Edwards* support the proposition that we cannot aggregate a probationary sentence and a probation-revocation sentence for purposes of § 4A1.2(k).

Second, Conill-Perez contends that the lack of an initial carceral sentence means that the court should look to the date of his original probationary sentence when determining whether that sentence is within the 15-year lookback period. But he offers no authority for this point, and the Guidelines point in the other direction. As discussed, the Guidelines direct courts to aggregate the original sentence and the probation-revocation sentence under § 4A1.2(k)(1). They further instruct that when the combined sentence is “an adult term of imprisonment totaling more than one year and one month,” the question for the lookback period is “the date of last release from incarceration” on the combined sentence. § 4A1.2(k)(2). So Conill-Perez fails to establish a plain error in the calculation of his criminal-history score.

Conclusion

The district court erred when it applied the stash-house enhancement because the evidence does not show that Conill-Perez “maintained” the hotel room for purposes of § 2D1.1(b)(12). But it did not plainly err when it increased Conill-Perez’s criminal-history score by three points under § 4A1.1(a) based on his prior sentence. We thus affirm in part, reverse in part, and remand for resentencing.