

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

NOV 14 1990

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
JAMEEL-ISMAIL HASSAN SAAHIR,
Defendant-Appellant.

No. 90-1131
(D.C. No. 88-CR-237)
(D. Colo.)

ORDER AND JUDGMENT*

Before MCKAY, MOORE, and BRORBY, Circuit Judges.

BRORBY, Circuit Judge.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Mr. Saahir appeals, pro se, the district court's denial of his motion to correct an illegal sentence. As this is a pre-guidelines offense, "[w]e review the legality of a sentence de novo. Sentencing that falls within statutory limits, however, is

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

reviewed only for an abuse of discretion." United States v. Duncan, 870 F.2d 1532, 1535 (10th Cir.), cert. denied, 110 S. Ct. 264 (1989) (citations omitted).

Mr. Saahir was convicted of one count of conspiracy to import marijuana and two counts of importing and aiding the importation of marijuana in violation of 21 U.S.C. §§ 952, 963, and 18 U.S.C. § 2. Mr. Saahir was sentenced to two consecutive terms of three years each, and a term of five years concurrent with the six years total of the consecutive terms. In addition he received two consecutive sentences of special parole for two years on the importation counts. Mr. Saahir appealed to this court and we affirmed in an unpublished Order and Judgment, No. 88-1018, March 1, 1990, cert. denied, No. 89-7630, 47 Crim. L. Rptr. 3089. One week later, Mr. Saahir filed a motion to correct illegal sentence pursuant to Fed. R. Crim. P. 35(a). Mr. Saahir asked the court to strike the four-year term of special parole. The district judge in a minute order dated April 11, 1990, denied the motion. We affirm.

Mr. Saahir claims the trial court lacked statutory authority to impose terms of special parole for violations of 21 U.S.C. § 841(b)(1)(A) that occurred between October 12, 1984, the effective date of the Controlled Substances Penalties Amendments Act of 1984¹, and November 1, 1987, the effective date of the

¹ Controlled Substances Penalties Amendments Act of 1984, Pub. L. No. 98-473, §502, 98 Stat. 1837, 2068.

Sentencing Reform Act of 1984.² Under our prior rulings, see United States v. Levario, 877 F.2d 1483, 1487 (10th Cir. 1989); United States v. Garcia, 879 F.2d 803, 804 (10th Cir. 1989), Mr. Saahir is correct.

However, Mr. Saahir was sentenced not under 21 U.S.C. § 841(b)(1)(A), but rather under § 841(b)(1)(D), which applies "[i]n the case of less than 50 kilograms of marihuana" Controlled Substances Penalties Amendments Act of 1984, Pub. L. No. 98-473, § 502(C), 98 Stat. 1837, 2068-2069, as amended by the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 § 1002, 100 Stat. 3207, 3207-2. Nowhere does the record suggest that Mr. Saahir was found to possess 50 or more kilograms of marijuana.

Unlike § 841(b)(1)(A), the applicable section now before us-- § 841(b)(1)(D)--requires that "[a]ny sentence imposing a term of imprisonment under this paragraph shall ... impose a term of supervised release of at least 2 years in addition to such term of imprisonment" Statutory authority for the imposition of special parole under § 841(b)(1)(D) persisted until the "supervised release" provisions of the Anti-Drug Abuse Act became effective on November 1, 1987, under § 1004(a) and the Sentencing Reform Act of 1984.³

² See Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 235, 98 Stat. 1987, 2031 (1984), as amended by Sentencing Reform Amendments Act of 1985, Pub. L. No. 99-217, § 4, 99 Stat. 1728 (1985).

³ See note 2, supra.

As the challenged sentence is within statutory limits, and was imposed without abuse of discretion, the sentence must stand. The order of the district court is **AFFIRMED**.

The mandate shall issue forthwith.

Entered for the Court:

WADE BRORBY
Circuit Judge