

FILED
United States Court of Appeals
Tenth Circuit

OCT 07 1991

ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MANUEL CORTEZ-GOMEZ,
Defendant-Appellant.

No. 90-2291
(D. C. No. CR-90-301-HB)
(D. N.M.)

ORDER AND JUDGMENT*

Before ANDERSON, TACHA, and BRORBY, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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. Cortez-Gomez entered guilty pleas to possession of less than fifty kilograms of marijuana with intent to distribute and to aiding and abetting, and was sentenced to twenty-four months

* 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.

imprisonment. Mr. Cortez-Gomez appeals his sentence.

Following Mr. Cortez-Gomez's guilty pleas, a presentence report was prepared and filed. This report calculated a sentencing guideline range of twenty-four to thirty months based upon an adjusted offense level of 16 and a criminal history category of II.¹ At sentencing defense counsel requested a sentence at the bottom of the guideline range. The sentencing court complied with this request, sentencing Mr. Cortez-Gomez to the minimum possible of twenty-four months.

Counsel for Mr. Cortez-Gomez commendably and properly filed a brief with this court pursuant to Anders v. California, 386 U.S. 738 (1967), and noted his inability to discover error by the sentencing court.

We have reviewed the record on appeal and note there were no disputed facts contained in the presentence report. We can discern no error in the sentencing calculations prejudicial to Mr. Cortez-Gomez.

In United States v. Garcia, 919 F.2d 1478, 1482 (10th Cir.

¹ The presentence report states "[t]he total of the criminal history points is four. According to the sentencing table, Chapter 5, Part A, four points establishes a criminal history category of II." We note, however, that four points establishes a criminal history level of III. The correct sentencing guideline range is twenty-seven to thirty months. Mr. Cortez-Gomez received the benefit of this miscalculation. Because the government did not appeal this issue, we refuse to consider this sentencing error.

1990), we held we have no jurisdiction to review a sentence imposed within the appropriate guideline range. As no error has been asserted by the Government, as we discern no error concerning clearly erroneous factual findings, improper calculation or application of the sentencing guidelines prejudicial to Mr. Cortez-Gomez, and as the sentence lies within the proper parameters of the statutes and guidelines, we lack jurisdiction to review the sentence imposed.

This appeal is therefore dismissed. The mandate shall issue forthwith.

Entered for the Court:

WADE BRORBY
Circuit Judge