

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-3002**September Term, 2019**

FILED ON: DECEMBER 3, 2019

UNITED STATES OF AMERICA,
APPELLEE

v.

MARCELLUS R. FREEMAN, ALSO KNOWN AS DERRICK PITTS,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:13-cr-00212-1)

Before: GARLAND, *Chief Judge*, and ROGERS and RAO, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs of the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the judgment of the District Court be **AFFIRMED**.

Marcellus Freeman pled guilty to one count of violating 18 U.S.C. § 922(g)(1), unlawful possession by a felon of a firearm. In his plea agreement, Freeman waived the right to appeal his as-yet-undetermined sentence, “except to the extent the Court sentences [him] above the statutory maximum or guidelines range determined by the Court or [he] claims that [he] received ineffective assistance of counsel.” Plea Agreement at 7 (J.A. 17). The district court sentenced Freeman to 110 months in prison, to run consecutively with the other sentences Freeman is serving. Freeman appeals this sentence.

As a threshold matter, Freeman contends that his appeal waiver does not bar his appeal. We need not address the effect of Freeman's appeal waiver because, in any event, his challenges to his sentence fail on the merits.

First, Freeman argues that the district court miscalculated his Sentencing Guidelines range by considering Freeman's prior conviction for Maryland robbery with a dangerous weapon to be a "crime of violence." See U.S.S.G. § 4B1.2(a)(1). *United States v. Redrick*, 841 F.3d 478 (D.C. Cir. 2016), forecloses this argument. In *Redrick*, this Court held that the Maryland offense of robbery with a dangerous weapon qualifies as a violent felony under the elements clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(i). *Redrick*, 841 F.3d at 484-85. Because "we apply the ACCA standard to determine whether an offense qualifies as a crime of violence under section 4B1.2," *United States v. Sheffield*, 832 F.3d 296, 313 (D.C. Cir. 2016) (quoting *In re Sealed Case*, 548 F.3d 1085, 1098 (D.C. Cir. 2008)), *Redrick* makes clear that Maryland robbery with a dangerous weapon is a crime of violence under the Guidelines. Accordingly the district court did not err in its calculation.¹

Second, Freeman argues that the district court abused its discretion by running Freeman's sentence consecutively, rather than concurrently, with his prior Maryland sentences. He relies upon U.S.S.G. § 5G1.3(b)(2), which provides that, "if a term of imprisonment resulted from another offense that is relevant conduct to the instant offense of conviction," the court shall impose "the sentence for the instant offense . . . to run concurrently to the remainder of the undischarged term of imprisonment." See *id.* § 1B1.3 (defining "relevant conduct").

But Freeman's conduct in the Maryland case is not "relevant" to his offense here. To be sure, the Maryland conduct occurred only four months before this case and also involved possession of a firearm. But Freeman's Maryland conduct involved an armed robbery and carjacking; here, he was convicted for possessing a firearm in connection with drug dealing. The record contains no suggestion that Freeman's firearm offense was "in furtherance" of the Maryland armed robbery and carjacking, "reasonably foreseeable in connection" with it, or that the offenses were otherwise "part of the same course of conduct or common scheme

¹ Freeman acknowledged that his appeal on this point was "largely for the purposes of preserv[ing]" his argument, Appellant Br. at 11, while there was a petition pending for a writ of certiorari in *United States v. Bell*, 901 F.3d 455 (4th Cir. 2018), *cert. denied*, 140 S. Ct. 123 (2019). In *Bell*, the Fourth Circuit held that Maryland robbery with a deadly weapon is a violent felony under ACCA. *Id.* at 471-72; *accord Redrick*, 841 F.3d at 484-85. The Supreme Court denied that petition on October 7, 2019.

or plan.” U.S.S.G. § 1B1.3(a)(1)(B). Hence, the district court did not abuse its discretion by running Freeman’s sentence consecutively with his Maryland sentences.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Ken Meadows

Deputy Clerk