

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Rowell Flora

No. 19-51017, United States Court of Appeals for the Fifth Circuit (September 9, 2020)

SUMMARY

The Fifth Circuit held that a violation of the Posse Comitatus Act does not divest a district court of subject matter jurisdiction, so the court properly denied the defendant's motion to dismiss the indictment. The court also enforced the defendant's appeal waiver, finding that his sentencing challenges were barred even though he was not specifically advised at arraignment about the court's authority to impose consecutive sentences. Subject matter jurisdiction cannot be waived and is reviewed de novo, but the indictment's use of statutory language was sufficient to establish jurisdiction under 18 U.S.C. § 3231.

CASE DETAILS

|                       |                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Fifth Circuit                                                   |
| WRITING FOR THE COURT | Haynes; Willett; Ho                                                                                    |
| JURISDICTION          | Federal                                                                                                |
| DECIDED               | September 9, 2020                                                                                      |
| DOCKET                | 19-51017                                                                                               |
| DISPOSITION           | affirmed                                                                                               |
| PROCEDURAL POSTURE    | Appeal from the United States District Court for the Western District of Texas, USDC No. 5:17-CR-641-1 |
| STANDARD OF REVIEW    | De novo for subject matter jurisdiction; sentence review barred by appeal waiver                       |
| PRECEDENTIAL VALUE    | unpublished                                                                                            |
| PARTIES               | Rowell Flora v. United States of America                                                               |

TOPICS

- criminal procedure
- sentencing
- subject matter jurisdiction
- appellate procedure
- waiver

PRACTICE AREAS

- Criminal Law
- Appellate Practice

## QUESTIONS PRESENTED

1. Whether the district court lacked subject matter jurisdiction due to a violation of the Posse Comitatus Act
2. Whether the procedural and substantive reasonableness of his sentence is reviewable despite an appeal waiver

## HOLDINGS

1. A violation of the Posse Comitatus Act does not divest a district court of subject matter jurisdiction. The indictment charged offenses against the United States in language similar to the relevant statutes, so the district court had jurisdiction.
2. The appeal waiver is enforceable because Flora was advised of his right to appeal and that he was waiving it. He was not required to be specifically advised of the statutory authority to impose consecutive sentences.

## KEY QUOTATIONS

*“A violation of the PCA does not divest a district court of subject matter jurisdiction, so we need not consider whether such a violation occurred.” (Page 2)*

*“The district court’s jurisdiction was not precluded by a military court’s concurrent jurisdiction.” (Page 2)*

*“The fact that Flora was not specifically advised at that time of the district court’s statutory authority to run his sentences consecutively, does not render his appeal waiver unenforceable.” (Page 3)*

## FACTUAL BACKGROUND

Flora was charged with distribution and receipt of child pornography. He pleaded guilty. The district court imposed two consecutive 240-month sentences.

## PROCEDURAL HISTORY

Flora pleaded guilty to distribution and receipt of child pornography and was sentenced to two consecutive 240-month sentences. He appeals his convictions and sentences.

## DISPOSITION

affirmed

## CASES CITED

- United States v. Cotton, 535 U.S. 625, 630 (2002)
- United States v. Isgar, 739 F.3d 829, 838 (5th Cir. 2014)
- United States v. Hartley, 796 F.2d 112, 114-15 (5th Cir. 1986)
- United States v. Wolffs, 594 F.2d 77, 85 (5th Cir. 1979)
- United States v. Hodge, 487 F.2d 945, 946 (5th Cir. 1973) (per curiam)

- United States v. McKinney, 406 F.3d 744, 746 & n.2 (5th Cir. 2005)
- United States v. Hernandez, 234 F.3d 252, 256 (5th Cir. 1997)
- United States v. Bond, 414 F.3d 542, 544 (5th Cir. 2005)

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/fifth-circuit/2020/united-states-v-rowell-flora-1cpsruch>