

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

United States v. Docampo

573 F.3d 1091 (11th Cir. 2009) · No. No. 08-10698 · Decided June 15, 2009

SUMMARY

The Eleventh Circuit affirmed John Andrew Docampo Jr.'s convictions and 270-month sentence arising from a federal sting operation involving an attempted armed robbery of a fictional cocaine stash house. The court held that the admission of hearsay concerning a threat to a witness was harmless, and upheld the obstruction-of-justice enhancement and denial of a minor-role reduction. The court also concluded that the sentence was procedurally and substantively reasonable, including in comparison with the sentences received by other conspirators.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Pryor, Circuit Judge; Barkett, Circuit Judge; Farris, Circuit Judge, sitting by designation
JURISDICTION	Federal
DECIDED	June 15, 2009
DOCKET	No. 08-10698
DISPOSITION	affirmed
PROCEDURAL POSTURE	Docampo appealed his federal convictions and 270-month sentence after a jury found him guilty of drug-conspiracy and firearm offenses.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion, subject to harmless-error review. Factual findings underlying sentencing, including role in the offense, are reviewed for clear error; application of the Sentencing Guidelines to those facts is reviewed de novo. Criminal sentences are reviewed for procedural and substantive reasonableness under an abuse-of-discretion standard.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John Andrew Docampo, Jr. v. United States of America

TOPICS

- sentencing
- criminal procedure
- sentencing guidelines
- hearsay
- appellate procedure

PRACTICE AREAS

Federal criminal law

Criminal procedure

Evidence

Sentencing

Appellate procedure

QUESTIONS PRESENTED

1. Whether the admission of testimony recounting the witness's girlfriend's statement about Docampo's threat was inadmissible hearsay and, if so, whether the error required reversal.
2. Whether the government engaged in sentencing factor manipulation warranting a sentence below the statutory mandatory minimum.
3. Whether the district court properly applied an obstruction-of-justice enhancement based on hearsay evidence concerning Docampo's threatening phone call.
4. Whether Docampo was entitled to a minor-role reduction under U.S.S.G. § 3B1.2.
5. Whether Docampo's 270-month sentence was procedurally or substantively unreasonable because of inadequate consideration of the 18 U.S.C. § 3553(a) factors and disparities between his sentence and those of other participants.

HOLDINGS

1. The district court abused its discretion by admitting Lorenzo's testimony about the witness's girlfriend's out-of-court statement because the government failed to establish an applicable hearsay exclusion or exception, but the error was harmless and did not warrant reversal.
2. The Eleventh Circuit did not recognize sentencing factor manipulation as a defense or basis for reducing Docampo's sentence, and Docampo failed to show the extraordinary government misconduct required even if such a reduction were available.
3. The district court properly applied a two-level obstruction-of-justice enhancement based on the threatening phone call because the hearsay evidence relied upon at sentencing had sufficient indicia of reliability.
4. Docampo was not entitled to a minor- or minimal-participant reduction because the district court properly considered his firearm possession and found that he was not less culpable than most other participants.
5. The 270-month sentence was procedurally and substantively reasonable, and the disparities between Docampo's sentence and the sentences of cooperating federal defendants and state defendants did not establish an unwarranted disparity under 18 U.S.C. § 3553(a)(6).

KEY QUOTATIONS

“Because the testimony is hearsay and is not excepted under Rule 801, the district court abused its discretion when it admitted Lorenzo's testimony about the phone call.” (1097)

“We have not yet recognized a defense of sentencing factor manipulation or permitted its application to a defendant's sentence, and we do not do so in this appeal.” (1098)

“Section 3553(a)(6) is concerned with unwarranted disparities in sentences among federal defendants.”
(1102)

“Because Docampo has not established that his sentence ‘fails to achieve the purposes of sentencing as stated in section 3553(a),’ id., we conclude that his sentence is reasonable.” (1103)

FACTUAL BACKGROUND

Federal agents conducted a sting operation involving a fictional cocaine stash-house robbery. Docampo, who was 18 years old and had no prior criminal history, joined the group shortly before the planned robbery, discussed the robbery with an undercover agent, obtained a firearm, and was arrested with other participants before the robbery occurred. After arrest, Docampo threatened a witness through the witness's girlfriend, and the district court relied on that conduct for an obstruction-of-justice enhancement. Other participants either cooperated and pleaded guilty in federal court or were juveniles prosecuted in state court and sentenced to probation.

PROCEDURAL HISTORY

Docampo was initially indicted with charges of drug conspiracy and firearm possession, but those charges were dismissed because of Speedy Trial Act violations. He was reindicted approximately one month later on identical charges. After a jury trial, he was convicted on all charges and sentenced to 210 months for the conspiracy counts followed by a consecutive mandatory minimum of 60 months for the firearm count. The Eleventh Circuit affirmed the convictions and sentences.

DISPOSITION

affirmed

CASES CITED

- United States v. Henderson, 409 F.3d 1293, 1297 (11th Cir. 2005)
- United States v. Church, 955 F.2d 688, 700 (11th Cir. 1992)
- United States v. Rodriguez De Varon, 175 F.3d 930, 937, 940, 944 (11th Cir. 1999) (en banc)
- United States v. Massey, 443 F.3d 814, 818 (11th Cir. 2006)
- United States v. Booker, 543 U.S. 220, 261 (2005)
- United States v. Williams, 526 F.3d 1312, 1321, 1323-24 (11th Cir. 2008) (per curiam)
- United States v. Talley, 431 F.3d 784, 786-88 (11th Cir. 2005) (per curiam)
- United States v. Thomas, 446 F.3d 1348, 1354-55 (11th Cir. 2006)
- United States v. Arbolaez, 450 F.3d 1283, 1290 (11th Cir. 2006) (per curiam)
- United States v. Ciszkowski, 492 F.3d 1264, 1270-71 (11th Cir. 2007)
- United States v. Sanchez, 138 F.3d 1410, 1414 (11th Cir. 1998)
- United States v. Williams, 456 F.3d 1353, 1371 (11th Cir. 2006), abrogated on other grounds by Kimbrough v. United States, 552 U.S. 85 (2007)

- United States v. Bohannon, 476 F.3d 1246, 1252 (11th Cir. 2007)
- United States v. Gordon, 231 F.3d 750, 760-61 (11th Cir. 2000)
- Gall v. United States, 552 U.S. 38, 596-97 (2007)
- United States v. Hunt, 459 F.3d 1180, 1182 n.3, 1184 (11th Cir. 2006)
- United States v. Mateo-Espejo, 426 F.3d 508, 514 (1st Cir. 2005)
- United States v. Willis, 139 F.3d 811, 812 (11th Cir. 1998) (per curiam)
- United States v. Clark, 434 F.3d 684, 687 (4th Cir. 2006)
- United States v. Wurzinger, 467 F.3d 649, 654 (7th Cir. 2006)
- United States v. Pugh, 515 F.3d 1179, 1191, 1203-04 (11th Cir. 2008)
- United States v. Thomas, 498 F.3d 336, 339-40 (6th Cir. 2007)
- United States v. Miranda, 505 F.3d 785, 792, 796 (7th Cir. 2007)
- Rita v. United States, 551 U.S. 338, 355-59 (2007)
- Kimbrough v. United States, 552 U.S. 85, 564, 570, 574 (2007)
- Nelson v. United States, 555 U.S. 350, 129 S. Ct. 890, 892 (2009)
- United States v. Cabrera, 567 F. Supp. 2d 271, 273 (D. Mass. 2008)
- Roper v. Simmons, 543 U.S. 551, 561, 569-74 (2005)
- Blackmon v. Wainwright, 608 F.2d 183, 184 (5th Cir. 1979)
- Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc)
- Albemarle Paper Co. v. Moody, 422 U.S. 405, 416 (1975)

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