

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

United States v. Lopez

No. 18-1418, United States Court of Appeals for the First Circuit (April 30, 2020)

SUMMARY

In a RICO conspiracy sentencing appeal, the First Circuit held as a matter of first impression that a role-in-the-offense enhancement under USSG §3B1.1 depends on the defendant’s role in the racketeering enterprise as a whole, not on his role in the discrete predicate acts. The court affirmed a three-level managerial/supervisory enhancement for an MS-13 member who acted as de facto leader of a clique after the First Word’s arrest. The defendant’s alternative challenge to the factual basis for the role finding was waived and, in any event, lacked plain error given undisputed PSI facts.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Selya; Howard; Torruella
JURISDICTION	Federal
DECIDED	April 30, 2020
DOCKET	18-1418
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a sentencing decision in the United States District Court for the District of Massachusetts.
STANDARD OF REVIEW	De novo review of district court's interpretation and application of sentencing guidelines; plain error review for factual findings not objected to below.
PRECEDENTIAL VALUE	Published
PARTIES	David López v. United States of America

TOPICS

- sentencing
- criminal procedure
- conspiracy
- standard of review
- appellate procedure

PRACTICE AREAS

- Criminal Law
- Sentencing
- RICO

QUESTIONS PRESENTED

1. When a defendant is convicted of racketeering conspiracy under RICO, does the imposition of a role-in-the-offense enhancement depend upon the defendant's role in the racketeering enterprise as a whole or upon his role in the discrete acts of racketeering activity that underpin the RICO conviction?
2. Whether the district court's factual finding that the defendant was a manager or supervisor of the enterprise was supported by the record.

HOLDINGS

1. The imposition of a role-in-the-offense enhancement under USSG §3B1.1(b) depends upon the defendant's role in the racketeering enterprise as a whole, not upon his role in the discrete predicate acts that underpin the charged conspiracy.
2. The factual finding was not clearly erroneous; the defendant's claim of error was waived, and even if not waived, the finding was supported by uncontested facts in the PSI Report.

KEY QUOTATIONS

“We hold that when a defendant is convicted of racketeering conspiracy under 18 U.S.C. § 1962(d), the imposition of a role-in-the-offense enhancement under USSG §3B1.1(b) depends upon his role in the racketeering enterprise as a whole, not upon his role in the discrete predicate acts that underpin the charged conspiracy.” (at 13-14)

FACTUAL BACKGROUND

The defendant was a member of the MS-13 Chelsea clique. After the clique's leader, Rafael Leoner-Aguirre, was arrested, the defendant became the de facto leader on the streets, directing the clique's illicit activities. He participated in the shooting of a rival gang member, Denys Perdomo Rodriguez, and planned the execution of a suspected informant, CW-2. He was convicted of RICO conspiracy under 18 U.S.C. § 1962(d). The district court imposed a three-level role-in-the-offense enhancement under USSG §3B1.1(b) based on his managerial role in the enterprise as a whole.

PROCEDURAL HISTORY

The defendant pleaded guilty to one count of RICO conspiracy. The district court applied a three-level role-in-the-offense enhancement under USSG §3B1.1(b) and sentenced him to 240 months. The defendant appealed, arguing procedural error in the application of the enhancement.

DISPOSITION

affirmed

CASES CITED

- United States v. Ocasio-Cancel, 727 F.3d 85, 88 (1st Cir. 2013)
- United States v. Leoner-Aguirre, United States v. Leoner-Aguirre, 939 F.3d 310, 313-14 (1st Cir. 2019)

- United States v. Ivezaj, 568 F.3d 88, 99-100 (2d Cir. 2009)
- United States v. Damico, 99 F.3d 1431, 1437-38 (7th Cir. 1996)
- United States v. Yeager, 210 F.3d 1315, 1317 (11th Cir. 2000)
- United States v. Coon, 187 F.3d 888, 899 (8th Cir. 1999)
- United States v. Carrozza, 4 F.3d 70, 78 n.6 (1st Cir. 1993)
- United States v. Flete-Garcia, 925 F.3d 17, 37 (1st Cir.), cert. denied, 140 S. Ct. 388 (2019)
- United States v. Duarte, 246 F.3d 56, 60 (1st Cir. 2001)
- United States v. Miranda-Díaz, 942 F.3d 33, 39 (1st Cir. 2019)
- United States v. Matos-de-Jesús, 856 F.3d 174, 177 (1st Cir. 2017)
- United States v. Ruiz-Huertas, 792 F.3d 223, 226 (1st Cir. 2015)
- United States v. Carbajal-Váldez, 874 F.3d 778, 783 (1st Cir. 2017)
- United States v. Morillo, 8 F.3d 864, 872 (1st Cir. 1993)
- United States v. Savoie, 985 F.2d 612, 616 (1st Cir. 1993)
- United States v. Fraser, 388 F.3d 371, 377 (1st Cir. 2004)
- Sandstrom v. ChemLawn Corp., 904 F.2d 83, 86 (1st Cir. 1990)