

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United States v. Luis D. Mercado

United States v. Luis D. Mercado · No. 22-1947 · Decided August 29, 2023

SUMMARY

The United States Court of Appeals for the Third Circuit affirmed the denial of a sentencing reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a). The court held that the Guideline is genuinely ambiguous regarding the evidence that may demonstrate acceptance of responsibility and that its commentary reasonably permits consideration of unrelated post-plea criminal conduct, including drug use and failure to complete treatment. The court concluded that the District Court did not clearly err in denying the reduction and affirmed Mercado’s 10-month sentence.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Krause; Jordan; Smith
JURISDICTION	Federal
DECIDED	August 29, 2023
DOCKET	22-1947
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mercado appealed from his federal sentence, arguing that the District Court improperly denied him a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a) based on his post-plea cocaine use and failures to comply with substance-abuse treatment and testing conditions.
STANDARD OF REVIEW	The interpretation of the Sentencing Guidelines is reviewed de novo; the determination whether a defendant is entitled to an acceptance-of-responsibility adjustment is reviewed for clear error, with great deference given to the sentencing court.
PRECEDENTIAL VALUE	precedential
PARTIES	Luis D. Mercado v. United States of America

TOPICS

- sentencing guidelines
- sentencing
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

Federal criminal sentencing

Sentencing Guidelines

Appellate review

QUESTIONS PRESENTED

1. Whether U.S.S.G. § 3E1.1(a) unambiguously precludes a sentencing court from considering post-plea criminal conduct unrelated to the offense of conviction when determining acceptance of responsibility.
2. Whether the commentary to U.S.S.G. § 3E1.1(a), including considerations of withdrawal from criminal conduct and post-offense rehabilitation, reasonably and authoritatively permits consideration of such post-plea conduct.
3. Whether the District Court clearly erred in denying Mercado an acceptance-of-responsibility reduction based on his repeated cocaine use and noncompliance with treatment and testing conditions.

HOLDINGS

1. Section 3E1.1(a)'s requirement that a defendant clearly demonstrate acceptance of responsibility for his offense is genuinely ambiguous as to what evidence and conduct may be considered; it does not unambiguously limit the inquiry to words of remorse or conduct related only to the offense of conviction.
2. The commentary to § 3E1.1(a) reasonably interprets the ambiguous Guideline by permitting consideration of post-offense conduct, including voluntary termination or withdrawal from criminal conduct or associations and post-offense rehabilitative efforts.
3. The District Court did not clearly err in denying Mercado a reduction under § 3E1.1(a) based on his repeated post-plea cocaine use, failure to attend substance-abuse treatment, and failure to comply with drug-testing requirements.

KEY QUOTATIONS

“Actions speak louder than words. So when a defendant continues to engage in criminal activity following a guilty plea, that post-plea conduct may bear on whether he has genuinely accepted responsibility for his crime of conviction.” (2)

“So whether a person has “demonstrated” acceptance of responsibility turns on both words and deeds. It is not limited—let alone “unambiguously” limited—to verbal expressions of remorse.” (7)

“Continual criminal activity, even differing in nature from the convicted offense, is inconsistent with an acceptance of responsibility and an interest in rehabilitation.” (11)

FACTUAL BACKGROUND

Mercado filed fraudulent Pandemic Unemployment Assistance claims weekly for approximately one year and collected \$37,555 in fraudulent benefits. He waived indictment and pleaded guilty to wire fraud. After pleading guilty, he repeatedly used cocaine, failed to attend substance-abuse counseling, and refused or failed to complete required drug testing, despite those activities being conditions of his pre-sentencing release. The District Court denied a two-level acceptance-of-responsibility adjustment and sentenced him to 10 months' imprisonment.

PROCEDURAL HISTORY

Mercado waived indictment and pleaded guilty to wire fraud under 18 U.S.C. § 1343. The Probation Office recommended against an acceptance-of-responsibility reduction because of his post-plea misconduct. The Middle District of Pennsylvania denied the reduction and sentenced him to 10 months' imprisonment, at the bottom of the applicable 10-to-16-month Guidelines range. The Third Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Nasir, 17 F.4th 459, 471 (3d Cir. 2021) (en banc)
- Kisor v. Wilkie, 139 S. Ct. 2400, 2415 (2019)
- United States v. Adair, 38 F.4th 341, 347-48, 350, 359-60 (3d Cir. 2022)
- United States v. Harris, 751 F.3d 123, 126 (3d Cir. 2014)
- United States v. Banks, 55 F.4th 246, 253, 257-58 (3d Cir. 2022)
- United States v. Brow, 62 F.4th 114, 120 (3d Cir. 2023)
- United States v. Ceccarani, 98 F.3d 126, 130 (3d Cir. 1996)
- United States v. Murillo, 933 F.2d 195, 198-99 (3d Cir. 1991)
- Minnick v. Mississippi, 498 U.S. 146, 167 (1990) (Scalia, J., dissenting)
- United States v. Cooper, 998 F.3d 806, 811 (8th Cir. 2021)
- United States v. McCarthy, 32 F.4th 59, 64 (1st Cir. 2022)
- United States v. Strange, 65 F.4th 86, 92 (2d Cir. 2023)
- United States v. Hinojosa-Almance, 977 F.3d 407, 411 (5th Cir. 2020)
- United States v. Tuttle, 63 F.4th 673, 675-77 (8th Cir. 2023)
- United States v. Finnesy, 953 F.3d 675, 702 (10th Cir. 2020)
- United States v. O'Neil, 936 F.2d 599, 600-01 (1st Cir. 1991)
- United States v. Chu, 714 F.3d 742, 747-48 (2d Cir. 2013)
- United States v. Watkins, 911 F.2d 983, 985 (5th Cir. 1990)
- United States v. McDonald, 22 F.3d 139, 143-44 (7th Cir. 1994)
- United States v. Arellano, 291 F.3d 1032, 1035 (8th Cir. 2002)
- United States v. Mara, 523 F.3d 1036, 1038 (9th Cir. 2008)
- United States v. Prince, 204 F.3d 1021, 1023-24 (10th Cir. 2000)
- United States v. Pace, 17 F.3d 341, 343-44 (11th Cir. 1994)
- United States v. Morrison, 983 F.2d 730, 733-35 (6th Cir. 1993)
- United States v. Lagasse, 87 F.3d 18, 25 (1st Cir. 1996)
- United States v. Olvera, 954 F.2d 788, 793 (2d Cir. 1992)
- United States v. Richards, 674 F.3d 215, 219 n.2 (3d Cir. 2012)

- United States v. Booker, 543 U.S. 220, 259-60 (2005) (Stevens, J., concurring)
- Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944)
- United States v. Boone, 279 F.3d 163, 193 (3d Cir. 2002)

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