

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

United States v. Fernando Godinez

Godinez · No. No. 19-1215 · Decided April 9, 2020

SUMMARY

The Seventh Circuit held that the district court plainly erred in applying a ten-year mandatory minimum sentence under 21 U.S.C. § 841(b)(1)(B) based on the defendant’s prior Ohio conviction for cocaine possession. Applying the First Step Act of 2018, the court concluded that the prior conviction did not necessarily entail possession with intent to manufacture or distribute a controlled substance and therefore did not qualify as a serious drug offense. The court vacated the judgment and remanded for resentencing.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Ripple; Flaum; Hamilton
JURISDICTION	Federal
DECIDED	April 9, 2020
DOCKET	No. 19-1215
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from a federal criminal judgment and sentence following guilty pleas.
STANDARD OF REVIEW	Plain-error review because the defendant did not object to the sentencing error below.
PRECEDENTIAL VALUE	Published Seventh Circuit opinion; precedential
PARTIES	Fernando Godinez v. United States of America

TOPICS

- sentencing
- statutory interpretation
- plain meaning rule
- appellate procedure
- standard of review

PRACTICE AREAS

- Federal criminal law
- Sentencing
- Statutory interpretation
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the First Step Act applied to Godinez because it was enacted after his plea agreement but before sentencing.
2. Whether Godinez's prior Ohio conviction for possession of cocaine was a serious drug offense under 18 U.S.C. § 924(e)(2)(A)(ii), and therefore a serious drug felony triggering the enhanced mandatory minimum under 21 U.S.C. § 841(b)(1)(B).
3. Whether the district court's use of the incorrect ten-year mandatory minimum constituted plain error warranting resentencing.

HOLDINGS

1. The relevant First Step Act amendments applied to Godinez because his offense predated enactment and his sentence had not been imposed when the Act became effective.
2. A state offense qualifies as a serious drug offense only when the conduct prohibited by the offense necessarily entails manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance; an offense need not expressly include the conduct as a formal element, but a mere permissive inference is insufficient.
3. Godinez's Ohio conviction for possession of cocaine under Ohio Revised Code § 2925.11 was not a serious drug offense under § 924(e)(2)(A)(ii) because the Ohio possession statute did not necessarily entail intent to manufacture or distribute cocaine.
4. The district court plainly erred by using a ten-year mandatory minimum instead of a five-year mandatory minimum, and the error affected Godinez's substantial rights and the fairness of the proceedings, requiring resentencing.

KEY QUOTATIONS

“Nonetheless, not every offense conceivably related to the manufacture or distribution of drugs “involves” the intent to manufacture or distribute.” (at 12)

“A legislative grant of an affirmative defense of personal use for the possession of small amounts of controlled substances does not compel the inference that a defendant who possesses a quantity in excess of that small amount necessarily has the intent to manufacture or distribute that larger amount.” (at 16)

“Mr. Godinez’s prior conviction for possession of cocaine was not a “serious drug offense” within the meaning of § 924(e)(2)(A) and therefore was not a “serious drug felony” under § 841(b)(1)(B).” (at 22)

FACTUAL BACKGROUND

Federal agents arrested Fernando Godinez and his brother during a controlled purchase involving approximately two kilograms of cocaine. Both brothers were armed, and Godinez had brought extra ammunition, although he surrendered without resistance when officers surrounded him. Godinez pleaded guilty to conspiracy to distribute cocaine and possession of a firearm in furtherance of a drug-trafficking crime. The district court relied on his 2008 Ohio conviction for possession of cocaine to impose a ten-year, rather than five-year, mandatory minimum on the drug-conspiracy count.

PROCEDURAL HISTORY

Godinez pleaded guilty to conspiracy to distribute cocaine and possession of a firearm in furtherance of a drug-trafficking crime. The district court treated his prior Ohio cocaine-possession conviction as a qualifying conviction for purposes of the enhanced mandatory minimum under 21 U.S.C. § 841(b)(1)(B), imposed a total sentence of 204 months, and used a ten-year mandatory minimum in calculating the sentence. Because Godinez did not object at sentencing, the Seventh Circuit reviewed for plain error and vacated the sentence, remanding for resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the sentence and remand to the district court for resentencing using the correct five-year mandatory minimum and without treating the Ohio possession conviction as a serious drug offense or serious drug felony.

CASES CITED

- United States v. Taylor, 909 F.3d 889, 893 (7th Cir. 2018)
- United States v. Olano, 507 U.S. 725, 732-34, 736 (1993)
- United States v. Atkinson, 297 U.S. 157, 160 (1936)
- Shular v. United States, 140 S. Ct. 779, 784-86 (2020)
- Kawashima v. Holder, 565 U.S. 478, 483-84 (2012)
- United States v. Williams, 931 F.3d 570, 575-76 (7th Cir. 2019)
- Russello v. United States, 464 U.S. 16, 23 (1983)
- United States v. Whindleton, 797 F.3d 105, 111 (1st Cir. 2015)
- United States v. Williams, 488 F.3d 1004, 1009 (D.C. Cir. 2007)
- United States v. Myers, 925 F.3d 881, 886 (6th Cir. 2019)
- United States v. Brandon, 247 F.3d 186, 191-95 (4th Cir. 2001)
- United States v. White, 837 F.3d 1225, 1233-34 (11th Cir. 2016)
- United States v. Walker, 858 F.3d 196, 200 (4th Cir. 2017)
- United States v. Fuentes-Oyervides, 541 F.3d 286, 289 (5th Cir. 2008)
- United States v. Karam, 496 F.3d 1157, 1167-68 (10th Cir. 2007)
- United States v. Martin, 692 F.3d 760, 766 (7th Cir. 2012)
- United States v. Jaimes-Jaimes, 406 F.3d 845, 850-51 (7th Cir. 2005)