

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States of America v. Elizaveta Nikonova

480 F.3d 371 (5th Cir. 2007) · No. No. 05-31093 · Decided February 26, 2007

SUMMARY

The Fifth Circuit held that the defendant's plea agreement preserved her right to challenge the reasonableness of her sentence under the applicability of Blakely to the federal Sentencing Guidelines. The court concluded that her 31-month sentence was reasonable, even assuming the sadistic-images enhancement was improperly applied, and affirmed the judgment.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Jerry E. Smith; Fortunato P. Benavides; Edith H. Jones
JURISDICTION	Federal
DECIDED	February 26, 2007
DOCKET	No. 05-31093
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nikonova pleaded guilty to possessing child pornography and appealed her 31-month sentence, arguing that her plea-agreement reservation permitted a Booker-related challenge and that the sentence was unreasonable.
STANDARD OF REVIEW	The court reviewed the validity and scope of the appeal waiver de novo. It reviewed the reasonableness of the sentence under Booker and the applicable sentencing-factor framework, while recognizing that the district court's discretionary decision not to depart downward was not reviewable.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Elizaveta Nikonova v. United States of America

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Nikonova's plea-agreement waiver barred her appeal.
2. Whether the plea agreement's reservation of the applicability of Blakely to the federal Sentencing Guidelines preserved a broader Booker-related challenge to the sentence.
3. Whether the 31-month sentence was unreasonable because of an allegedly erroneous sadistic-images enhancement or because the district court failed to give adequate weight to mitigating factors under 18 U.S.C. § 3553(a).
4. Whether the court had jurisdiction to review the district court's discretionary refusal to depart downward from the guideline range.

HOLDINGS

1. A plea-agreement waiver did not bar Nikonova's appeal because the agreement expressly preserved an appeal concerning the applicability of Blakely to the federal Sentencing Guidelines, and that reservation encompassed the remedy and consequences recognized in Booker.
2. A sentence within a properly calculated guideline range is presumptively reasonable and may be rebutted only when it falls so far afoul of the applicable sentencing standards as to constitute a clear error in the district court's exercise of its broad sentencing discretion.
3. The Fifth Circuit lacked jurisdiction to review the district court's discretionary decision not to depart downward from the guideline range; it could review only whether the resulting sentence was reasonable under the post-Booker framework.

KEY QUOTATIONS

“One consequence of Booker's holding that Blakely applies to the federal guidelines is that those guidelines became advisory, and courts are to look to all the factors described in 18 U.S.C. § 3553(a), instead of just to the guidelines, to devise a “reasonable” sentence.” (¶ 9)

“Therefore, the presumption of reasonableness that attaches to a properly calculated guideline sentence is rebutted only where the sentence falls so far afoul of one of the standards in Smith as to constitute a clear error in the court's exercise of its broad sentencing discretion.” (¶ 13)

FACTUAL BACKGROUND

Nikonova, a Russian citizen who immigrated to the United States, used her laptop to acquire and store child pornography. Authorities recovered seven image files and six movie files, including images depicting sadistic conduct involving prepubescent children. She pleaded guilty and argued at sentencing that she lacked the requisite intent for the sadistic-images enhancement and that her personal history, academic interests, immigration status, and other circumstances warranted a lower sentence.

PROCEDURAL HISTORY

The United States District Court for the Middle District of Louisiana initially calculated a guideline range of 41 to 51 months based on a four-level sadistic-images enhancement and imposed a 41-month sentence. After Nikonova filed her notice of appeal, the district court granted the government's Federal Rule of Criminal Procedure 35 motion and reduced the sentence to 31 months. The Fifth Circuit held that the appeal waiver did not bar the appeal, rejected the sentencing challenge, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Baymon, 312 F.3d 725, 727 (5th Cir. 2002)
- Blakely v. Washington, 542 U.S. 296 (2004)
- United States v. Booker, 543 U.S. 220 (2005)
- United States v. Cooper, 437 F.3d 324, 330-32 (3d Cir. 2006)
- United States v. Duhon, 440 F.3d 711, 716 (5th Cir. 2006)
- United States v. Gama-Gonzalez, 469 F.3d 1109, 1110 (7th Cir. 2006)
- United States v. Harris, 434 F.3d 767, 770 & n.2 (5th Cir. 2006)
- United States v. Hernandez, 457 F.3d 416, 424 (5th Cir. 2006)
- United States v. Jimenez-Beltre, 440 F.3d 514, 519 (1st Cir. 2006) (en banc)
- United States v. Mares, 402 F.3d 511, 519 (5th Cir. 2005)
- United States v. McKinney, 406 F.3d 744, 746 (5th Cir. 2005)
- United States v. Medina-Argueta, 454 F.3d 479, 483 (5th Cir. 2006)
- United States v. Smith, 440 F.3d 704, 708 (5th Cir. 2006)