

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Cesar Arellano Ortuno

United States v. Cesar Arellano Ortuno, No. 19-20043 (5th Cir. 2020) · No. 19-20043 · Decided April 6, 2020

SUMMARY

The Fifth Circuit affirmed a 210-month sentence for conspiracy to possess with intent to distribute methamphetamine, holding that the district court properly applied a two-level importation enhancement under U.S.S.G. § 2D1.1(b)(5). The court found sufficient evidence of importation from Mexico based on the PSR and agent testimony, and rejected the argument that the enhancement requires the defendant's knowledge of importation, as that issue is foreclosed by circuit precedent (Serfass, Foulks). Under plain error review, the district court committed no clear or obvious error.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	W. Eugene Davis; Jerry E. Smith; Stephen A. Higginson
JURISDICTION	Federal
DECIDED	April 6, 2020
DOCKET	19-20043
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from conviction and sentence for conspiracy to possess with intent to distribute methamphetamine and aiding and abetting possession with intent to distribute methamphetamine.
STANDARD OF REVIEW	plain error
PRECEDENTIAL VALUE	unpublished
PARTIES	Cesar Arellano Ortuno v. United States of America

TOPICS

[criminal procedure](#) [sentencing](#) [standard of review](#)

PRACTICE AREAS

[criminal law](#) [sentencing](#)

QUESTIONS PRESENTED

1. Whether the district court erred in finding that the offense involved importation of methamphetamine under U.S.S.G. § 2D1.1(b)(5).
2. Whether the district court erred in concluding that § 2D1.1(b)(5) does not require knowledge that the methamphetamine was imported.

HOLDINGS

1. The information in the PSR and the testimony at sentencing supported a finding of importation; no error, plain or otherwise.
2. The argument that § 2D1.1(b)(5) requires mens rea is foreclosed by circuit precedent; no error.

KEY QUOTATIONS

“The information in the PSR, coupled with the testimony at sentencing, supports a finding that the methamphetamine in this case was imported from Mexico, see United States v. Serfass, 684 F.3d 548, 553-54 (5th Cir. 2012); the district court committed no error, much less a clear or obvious error, see Puckett v. United States, 556 U.S. 129, 135 (2009).” (2)

“This argument is foreclosed by Serfass, 684 F.3d at 553-54, and United States v. Foulks, 747 F.3d 914, 915 (5th Cir. 2014).” (3)

“Absent an intervening Supreme Court or en banc decision or a change in statutory law.” (3)

FACTUAL BACKGROUND

Ortuno was involved in a conspiracy to distribute methamphetamine. The presentence report indicated the methamphetamine was imported from Mexico, based on law enforcement investigative files and reports. At sentencing, a federal agent testified that the large quantity and high purity level suggested importation from Mexico, and intercepted calls between a co-defendant and a man in Mexico discussed an upcoming delivery consistent with drugs received by Ortuno.

PROCEDURAL HISTORY

Ortuno pleaded guilty without a plea agreement and was sentenced to 210 months imprisonment and five years supervised release. He appealed the district court's application of a two-level enhancement for importation of methamphetamine under U.S.S.G. § 2D1.1(b)(5).

DISPOSITION

affirmed

CASES CITED

- United States v. Benitez, 809 F.3d 243, 249 (5th Cir. 2015)
- United States v. Torres-Perez, 777 F.3d 764, 766 (5th Cir. 2015)
- United States v. Serfass, 684 F.3d 548, 553-54 (5th Cir. 2012)

- Puckett v. United States, 556 U.S. 129, 135 (2009)
- United States v. Foulks, 747 F.3d 914, 915 (5th Cir. 2014)
- United States v. Kearby, 943 F.3d 969, 976 & n.8 (5th Cir. 2019)
- United States v. Treft, 447 F.3d 421, 425 (5th Cir. 2006)
- United States v. Job, 871 F.3d 852 (9th Cir. 2017)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/fifth-circuit/2020/united-states-v-cesar-arellano-ortuno-yclp6d40>