

United States Court of Appeals For the First Circuit

No. 19-1141

UNITED STATES,

Appellee,

v.

JUAN GARCIA,
a/k/a Alejandro Villar Dume,
a/k/a Alberto German Dumez,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

[Hon. Paul J. Barbadoro, U.S. District Judge]

Before

Howard, Chief Judge,
Lynch and Barron, Circuit Judges.

Theodore M. Lothstein on brief for appellant.
John J. Farley, First Assistant United States Attorney, and
Scott W. Murray, United States Attorney, on brief for appellee.

April 6, 2020

HOWARD, Chief Judge. The defendant-appellant pled guilty to conspiring to possess and distribute forty grams or more of fentanyl in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(vi), and 846, and was sentenced to 204 months in prison. On appeal, he contests his sentence, arguing that the district court erred by imposing an obstruction-of-justice enhancement and denying him credit for acceptance of responsibility. We affirm.

The government first received a tip in 2014 that a man named "Tony"--later found to be the defendant--was running a drug trafficking organization in Nashua, New Hampshire and Lawrence, Massachusetts. In 2015 and 2016, the government monitored six controlled purchases of fentanyl between the defendant and two confidential sources. At his change-of-plea hearing, the defendant admitted to taking part in four of these sales, which together involved 49.4 grams of fentanyl.

When the defendant was arrested, in April 2017, he refused to provide his name. He then claimed, at all times up to and through his sentencing, to be Juan Garcia from Bayamón, Puerto Rico. The defendant's fingerprints, however, were linked to a man named Alejandro Villar Dume from Bani, Dominican Republic, who had been processed by Dominican authorities in 2010. The defendant's ex-girlfriend and Dume's cousin both identified the defendant as

Dume, not Garcia, and several other witnesses confirmed that the defendant was from the Dominican Republic, not Puerto Rico.

The government also uncovered evidence that the date of birth, place of birth, parentage, and social security number that the defendant provided belonged to a man named Juan Ramon Garcia Fuentes. The photographs associated with Fuentes' Puerto Rico driver's license and passport application did not match the defendant, and Fuentes' brother told authorities that the defendant was not Fuentes.

The defendant refused to discuss his life before age twelve with the probation and pre-trial services officer, and some of the information that he gave about his personal history after that age did not check out. The pre-sentence investigation report ("PSR") concluded that the defendant "had not been truthful about his identity," and recommended that he receive a two-level obstruction-of-justice enhancement under Guideline 3C1.1 and no credit for acceptance of responsibility under Guideline 3E1.1, despite his guilty plea. The PSR further determined that the defendant qualified as a career offender under Guideline 4B1.1(b)(2) because he had previously been convicted of two felony crimes of violence for assaulting his ex-girlfriend with a dangerous weapon.

In reviewing the defendant's other criminal history, the PSR noted that he had three outstanding arrest warrants for unrelated offenses and had been involved in a violent altercation while awaiting trial in this case. As a career offender, the defendant faced a total offense level of thirty-four, a criminal history category of VI, and a guideline sentencing range ("GSR") of 262 to 327 months in prison.

At sentencing, defense counsel asserted that the government offered insufficient proof that the defendant was not Juan Garcia. After carefully reviewing the identity evidence with the parties, the sentencing court applied the obstruction enhancement and denied credit for acceptance of responsibility, finding that the information proffered by the government "establishe[d] beyond any reasonable doubt" that the defendant "is falsely using the name Juan Garcia." The court adopted the PSR's other recommendations, save for one adjustment that had no bearing on the GSR, and turned to the question of whether a downward variance was appropriate.

The sentencing court reasoned that, although the defendant claimed he had been alone since childhood, the court could not "really credit that statement, because the defendant has been lying about his background and where he has come from." Acknowledging that the defendant's struggles with addiction and

the relatively small amount of fentanyl involved in this case provided some basis for a variance, the court determined that the defendant nonetheless deserved "a substantial prison sentence, given the nature of his crime of conviction and his criminal history." The court imposed a 204-month sentence, reiterating that "a downward variance [was] required in order to accurately reflect the seriousness of the defendant's criminal conduct and his criminal history."

For the purposes of this appeal, the defendant does not dispute that he presented a false identity to the probation officer and the district court. Nevertheless, he argues that the obstruction enhancement and the associated denial of an acceptance-of-responsibility credit were not warranted because the false information he provided was not "material" to the sentencing court's decision.¹ This materiality argument was not made to the district court, and so we review it only for plain error. United States v. Correa-Osorio, 784 F.3d 11, 17 (1st Cir. 2015). To prevail on plain error review, the defendant "must show not just

¹ Although the defendant acknowledges that, due to his career offender status, the obstruction enhancement did not affect his GSR, he nonetheless challenges this enhancement because it served as the basis for denying him an acceptance-of-responsibility credit, which if granted, would have reduced the GSR.

(1) error, but (2) error that is clear, that (3) affected his substantial rights, and that (4) also seriously undermined the fairness, integrity, or public perception" of his proceedings. United States v. Takesian, 945 F.3d 553, 563 (1st Cir. 2019).

The Sentencing Guidelines state that "providing materially false information" to probation or the court merits application of a two-level obstruction-of-justice enhancement under the Sentencing Guidelines. U.S. Sentencing Guidelines Manual § 3C1.1 cmt. n.4(F), (H) (U.S. Sentencing Comm'n 2018). The materiality requirement under Guideline 3C1.1 "is not a stringent one." United States v. Ovalle-Márquez, 36 F.3d 212, 226 (1st Cir. 1994). When a defendant "continually maintain[s] a false identity until sentencing," that falsehood is material if it "could have impacted the decisions of the sentencing court." United States v. Pérez-Crisostomo, 899 F.3d 73, 75-76 (1st Cir. 2018) (quotations omitted).

Accordingly, the inquiry is not whether a falsehood in fact affected the sentencing court's decision, but whether it had "the potential to affect [an] issue under determination," such as the "incarceration period, [the] condition[s] of release, or whether the wrongful conduct has been mitigated in some way." United States v. Berrios, 132 F.3d 834, 840 (1st Cir. 1998); see also United States v. Restrepo, 53 F.3d 396, 397 (1st Cir. 1995)

(stating that presenting a false identity is material "even if the false information . . . did not ultimately affect the [probation] officer's recommendation [because the defendant's] deliberate misrepresentation had the potential to do so").

The defendant contends that his lies here were not material because the court granted a downward variance to reflect the seriousness of defendant's criminal conduct and his criminal history, and there is no evidence that his false identity could have affected the court's assessment of his criminal conduct or his criminal history. That the sentencing court gave two reasons why it thought a fifty-eight-month downward variance was appropriate, however, does not show that it would have imposed the same sentence had the defendant been forthcoming about his true identity.

A court must consider the "history and characteristics of the defendant," 18 U.S.C. § 3553(a)(1), and a defendant's lies about his identity and his background could impact that analysis in any number of ways. Moreover, here, where the sentencing court explicitly stated that, given the defendant's lack of candor, it could not accept his argument that he had been alone all his life, it is clear that the defendant's false identity did in fact influence the court's sentencing decision.

This Court has "repeatedly affirmed that lying about one's name and nationality during criminal proceedings is material and merits an obstruction enhancement," and so the district court committed no error, plain or otherwise, in applying such an enhancement here. See Pérez-Crisostomo, 899 F.3d at 76; see also Berrios, 132 F.3d at 840 (affirming obstruction enhancement for misrepresenting the defendant's name, date of birth, and personal history to the court); Restrepo, 53 F.3d at 397-98 (affirming obstruction enhancement for giving a false name to probation).

Had the defendant's objection been preserved, our review of the factual determinations supporting the obstruction enhancement would be for clear error. See United States v. Kelley, 76 F.3d 436, 441 (1st Cir. 1996) (reviewing a preserved challenge to a sentencing court's finding of material falseness for clear error). As we have concluded that there was no error at all, the result of this appeal would be the same.

The defendant does not claim he is entitled to credit notwithstanding the obstruction enhancement, nor could he prevail on this ground. A reduction in the offense level is warranted "if the defendant clearly demonstrates acceptance of responsibility for his offense," U.S.S.G. § 3E1.1, and "[c]onduct resulting" in an obstruction enhancement "ordinarily indicates that the defendant has not accepted responsibility for his criminal

conduct," id. § 3E1.1 cmt. n.4. Although an exception may be made in "extraordinary cases," id., the defendant explicitly concedes that his case does not meet that high bar.

Affirmed.