

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 8, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTOR ORTIZ-HERNANDEZ,
a/k/a Guero,

Defendant - Appellant.

Nos. 19-2157 & 19-2158
(D.C. Nos. 1:17-CR-03420 WJ-1 &
1:17-CR-03422-WJ-1)
(D. N.M.)

ORDER AND JUDGMENT*

Before **HOLMES, BACHARACH, and MORITZ**, Circuit Judges.

This appeal involves sentencing in two drug-trafficking cases. The defendant, Mr. Victor Ortiz-Hernandez, faced a guideline range of 168 to 210 months' imprisonment and requested a downward variance to 120

* Oral argument would not materially help us to decide this appeal. We have thus decided the appeal based on the appellate briefs and the record on appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).

This order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

months. The district court denied the request and sentenced Mr. Ortiz-Hernandez to the bottom of the guideline range (168 months) in both cases.

In this appeal, Mr. Ortiz-Hernandez challenges only the refusal to vary downward, arguing that the district court based this decision on a factual mistake. This argument relates to the district court's explanation that it had imposed 120-month sentences for less culpable defendants in a related drug trafficking case who had served only as couriers. Mr. Ortiz-Hernandez argues that this explanation was based on a factual mistake because the couriers had received sentences of less than 120 months.

But the record does not show a factual mistake. The government identifies the two couriers as Sonia Garibaldi-Bravo and Cesar Martin Hernandez. Both individuals received

- 120-month sentences,
- were identified in their presentence reports as couriers, and
- were defendants in *United States v. Felix-Tavizon*, No. CR-17-2943-WJ (D. N.M.), which the government had identified as related to the prosecution of Mr. Ortiz-Hernandez.

Mr. Ortiz-Hernandez points out that his presentence report did not list *Felix-Tavizon* as a related case. So what? The government identified *Felix-Tavizon* as a related case, and Mr. Ortiz-Hernandez gives no reason to question that characterization. The district court explained that it had sentenced two other less culpable defendants in a related case to 120-

month sentences. This explanation was correct, so we affirm Mr. Ortiz-Hernandez's sentences.

Entered for the Court

Robert E. Bacharach
Circuit Judge