

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted January 16, 2024*

Decided January 25, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1522

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MIGUEL A. RODRIGUEZ, JR.,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 03-cr-90-9

Steven C. Seeger,
Judge.

ORDER

Miguel Rodriguez has moved for a sentence reduction under § 404(b) of the First Step Act, Pub. L. 115-391, 132 Stat. 5194, 5222 (2018). The district court denied this motion. Seeing no procedural error or abuse of discretion, we affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

In 2008, Rodriguez was convicted of a racketeering conspiracy, 18 U.S.C. § 1962(d), and drug-trafficking conspiracy, 21 U.S.C. §§ 841(a)(1), 846. The racketeering conspiracy involved at least 4 murders and 14 attempted murders; jurors found Rodriguez liable for conspiring to distribute at least 50 grams of crack cocaine, 5 kilograms of mixtures containing cocaine, and 1,000 kilograms of marijuana; and, at sentencing, the district judge found that the conspirators had trafficked more than 1,500 grams of crack cocaine. As recommended by the Sentencing Guidelines and authorized by 18 U.S.C. § 1963(a) and 21 U.S.C. § 841(b)(1)(A)(viii), the judge imposed life imprisonment on both counts in 2009. (Rodriguez qualified for life imprisonment under § 1963(a) because the statutory maximum for some of the predicate acts of racketeering was life.)

On direct appeal, we affirmed. *United States v. Morales*, 655 F.3d 608, 615 (7th Cir. 2011) (named for a codefendant). Since then, Rodriguez's collateral attacks have been unsuccessful. *See* No. 15-2187 (7th Cir. Sept. 20, 2016) (denying certificate of appealability); No. 19-1065 (7th Cir. Oct. 24, 2019) (same); No. 23-2126 (7th Cir. June 29, 2023) (denying leave to file successive action).

Along the way, in 2020, Rodriguez moved for a sentence reduction under § 404(b) of the First Step Act. The district judge ruled (and the government accepts on appeal) that Rodriguez's crack-cocaine conviction makes him technically eligible for a reduction. The Act retroactively raises the crack quantity (from 50 grams to 280) that triggers a statutory range of 10 years to life, although Rodriguez's other cocaine and marijuana quantities independently qualify him for the same range.

Despite finding Rodriguez eligible, the judge exercised his discretion to deny a reduction. First, under both the 2008 Guidelines and today's Guidelines, the recommended sentence would be life imprisonment. Rodriguez initially had an offense level of 46, beyond the available maximum of 43. To start, before applying the rules on grouping, the racketeering conspiracy carried an adjusted offense level of 41 (43, the highest level for any of the predicate acts, minus 2 for his minor role in the killings). Then, under the grouping rules, five levels were added to account for the murders, attempted murders, and drug conspiracy. Concluding that this offense level and Rodriguez's criminal history category of VI would be unchanged if he were sentenced today, the judge observed that the Guidelines would recommend a life sentence.

Second, after reviewing the Guidelines, the judge consulted the sentencing factors under 18 U.S.C. § 3553(a) and concluded that a reduction was unwarranted:

Rodriguez's criminal history spanned two decades; the drug crimes were serious in their own right; and the conspiracies entailed several murders and other violence. To be sure, the judge acknowledged Rodriguez's expression of remorse, supportive letters from his family, and efforts at rehabilitation (for instance, his educational attainments in prison). Despite the pull of those factors, the judge concluded that a sentence reduction here would undermine deterrence and public respect for the law.

Rodriguez counters that today his Guidelines range would differ, but we do not see how. He stresses that the statutory range for the crack conspiracy, standing alone, would be lower today. Yet his marijuana and powder cocaine quantities would independently ensure the same statutory range under 21 U.S.C. § 841(b)(1)(A). And as the judge explained, Rodriguez's recommended sentence under the Guidelines would be life imprisonment even if he were sentenced on the racketeering conspiracy alone.

Rodriguez also asserts that under various federal sentencing statutes, conspiracy to commit murder does not qualify as a "crime of violence" or "violent felony," which he believes should reduce the sentencing range for his racketeering offense. But the law on crimes of violence does not affect his advisory range. Under the Guidelines, murder carries the same offense level today, 43, as it did at the time of sentencing. *See* U.S.S.G. §§ 2A1.1, 2E1.1(a)(2) (base offense level for racketeering equals that of the highest predicate offense). And the statutory maximum of life imprisonment applies under 18 U.S.C. § 1963 because some of the racketeering predicates (e.g., the marijuana and cocaine distribution apart from the crack cocaine) are punishable by life imprisonment.

Rodriguez next contends that the district judge abused his discretion by giving too little weight to his rehabilitation and his family's promise of support if he were released. But the judge did not abuse his discretion by expressly concluding that these concerns were outweighed by the seriousness of the conspiracies (which involved, among other things, murder), Rodriguez's criminal history, and concerns that a sentence reduction would undermine deterrence and respect for the law. Review of a First Step Act denial is deferential. *Concepcion v. United States*, 597 U.S. 481, 501 (2022). The judge here considered each of Rodriguez's principal arguments and adequately explained his decision, and we are not authorized to simply re-weigh the sentencing factors ourselves. *Id.* at 502; *see also, e.g., United States v. Clay*, 50 F.4th 608, 613–14 (7th Cir. 2022) (affirming denial of First Step Act motion where district judge conducted "thorough review" of § 3553(a) sentencing factors).

AFFIRMED