

NONPRECEDENTIAL DISPOSITION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

Argued April 23, 2024

Decided April 29, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-2614

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

EDUARDO YANEZ-BARRERA,
Defendant-Appellant.

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

No. 1:17-CR-00530(2)

John Robert Blakey,
Judge.

ORDER

Eduardo Yanez-Barrera pleaded guilty to conspiracy to distribute more than five kilograms of cocaine. 21 U.S.C. §846. He conceded that he is accountable for at least 90 kilograms. The district court calculated a range of 151 to 188 months under the Sentencing Guidelines and imposed a sentence of 121 months. Yanez-Barrera insists that his sentence is nonetheless too high.

His main appellate contention is that his guilty plea entitled him to a two-level reduction for accepting responsibility. The district court ruled otherwise, given that,

after being apprehended, Yanez-Barrera fled to Mexico, where he remained for five years. Under U.S.S.G. §3C1.1 this flight counts as obstruction of justice—and under U.S.S.G. §3E1.1 Application Note 4 an enhancement for obstruction prevents a reduction for accepting responsibility in the absence of extraordinary circumstances.

Yanez-Barrera maintains that the exception applies to him because he began to assist authorities immediately after his apprehension, and that his assistance enabled agents to find and prosecute at least one other drug dealer. Yet because Yanez-Barrera fled, he was not available to testify during that person’s trial. Absence from the United States negated much of the benefit from Yanez-Barrera’s assistance—though the judge nonetheless rewarded his assistance after his return by finding him eligible for a “safety valve” reduction in the minimum penalty and imposing a below-Guideline sentence. No rule of law compelled the sentencing judge to give Yanez-Barrera greater benefit from cooperation by allowing an acceptance-of-responsibility reduction despite the enhancement for obstructing justice. Appellate review is deferential, *United States v. Major*, 33 F.4th 370, 382 (7th Cir. 2022), and the judge did not commit clear error or abuse his discretion by holding to the norm stated in Application Note 4. We have consistently affirmed decisions denying reductions in similar circumstances. See *United States v. Pons*, 795 F.3d 745, 746–47 (7th Cir. 2015); *United States v. Munoz*, 718 F.3d 726, 727, 731 (7th Cir. 2013); *United States v. Gonzalez*, 608 F.3d 1001, 1007–09 (7th Cir. 2010); *United States v. King*, 506 F.3d 532, 535–36 (7th Cir. 2007).

Yanez-Barrera also contends that, because he did not have any criminal-history points, he should have received a two-level reduction in his offense score under U.S.S.G. §4C1.1, which the Sentencing Commission recently had proposed and has since put into force (it took effect on November 1, 2023). This goes nowhere, because the district judge stated that he had taken this into account and was sentencing Yanez-Barrera as if the proposed §4C1.1 were already in effect.

AFFIRMED