

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

November 30, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL RONALD GARDNER,

Defendant - Appellant.

No. 20-8060
(D.C. No. 1:20-CR-00036-NDF-1)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **HOLMES, KELLY, and MATHESON**, Circuit Judges.

Defendant-Appellant Michael Gardner received a 51-month sentence, three years’ supervised release, and a \$500 fine upon his conviction for possessing a firearm as a felon in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). The \$500 fine was due immediately and payable by installments through the inmate financial responsibility program or while on supervised release. 1 R. 54–55; 3 R. 70–71. The district court determined that Mr. Gardner lacked the ability to pay interest or penalties on the fine. 1 R. 54. On appeal, Mr. Gardner contends that the district court committed plain error when it concluded that he had the ability to pay the fine immediately given his financial

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

situation. Aplt. Br. at 1, 3–4. Our jurisdiction arises under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and we affirm.

Our review is for plain error because this issue was not raised below. United States v. Rosales-Miranda, 755 F.3d 1253, 1257 (10th Cir. 2014). The advisory guidelines generally provide that a court should impose a fine where a defendant can pay. U.S.S.G. § 5E1.2(a), (c)(1)–(4). If a defendant shows an inability to pay all or part of the fine, “the court may impose a lesser fine or waive the fine.” Id. § 5E1.2(e). “In determining whether to impose a fine, and the amount, time for payment, and method of payment,” courts must consider certain factors, including the ability to pay, which can include “payment on a date certain or in installments.” 18 U.S.C. § 3572(a), (d)(1); U.S.S.G. § 5E1.2(d).

Here, the district court concluded that Mr. Gardner “[could] not afford to pay a [guidelines-range] fine,” but could pay a reduced fine. 3 R. 70. This was in line with the Presentence Report, the factual findings not having been challenged. See 2 R. 105; 3 R. 56. A defendant’s monetary obligation can be both due immediately and satisfiable on a repayment plan. See United States v. Williams, 898 F.3d 1052, 1055 (10th Cir. 2018); see also 18 U.S.C. § 3572(d). Because the district court clearly accounted for Mr. Gardner’s financial situation and incorporated a payment plan for him, the district court’s imposition of a \$500 fine is not error. Therefore, the imposition of the fine cannot

constitute plain error. See United States v. Cristerna-Gonzalez, 962 F.3d 1253, 1260 (10th Cir. 2020).

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge