Case: 13-10657 Date Filed: 02/04/2014 Page: 1 of 2

[DO NOT PUBLISH]

## IN THE UNITED STATES COURT OF APPEALS

## FOR THE ELEVENTH CIRCUIT

No. 13-10657 Non-Argument Calendar

D.C. Docket No. 1:12-cr-20674-UU-3

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEPHON KENDRICKS,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

\_\_\_\_\_

(February 4, 2014)

Before TJOFLAT, JORDAN, and EDMONDSON, Circuit Judges.

Case: 13-10657 Date Filed: 02/04/2014 Page: 2 of 2

## PER CURIAM:

Stephon Kendricks appeals his below-guideline mandatory minimum 60-month sentence, imposed after pleading guilty to conspiracy to possess with intent to distribute 500 grams or more of cocaine. The district court -- following an evidentiary hearing -- did not err in denying Kendricks safety valve relief because Kendricks failed to meet his burden of proving that his safety-valve statement was sufficient, and the court's determination that Kendricks fell short of truthfully providing all of the information that he had about his offense was not clearly erroneous. Where a fact pattern gives rise to two reasonable and different constructions, "the factfinder's choice between them cannot be clearly erroneous." *United States v. Saingerard*, 621 F.3d 1341, 1343 (11th Cir. 2010) (quotation omitted).

The district court probably did not err and did not <u>plainly</u> err in failing to find (without prompting from the defendant) that the government breached Kendricks' plea agreement by expanding the scope of the required safety-valve disclosure statement to include information about prior drug transactions. For background, see *United States v. De La Garza*, 516 F.3d 1266, 1269 (11th Cir. 2008); *United States v. Figueroa*, 199 F.3d 1281, 1283 (11th Cir. 2000).

AFFIRMED.