

NONPRECEDENTIAL DISPOSITION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 May 12, 2023*

Decided May 15, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2042

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DARIUS J. MORALES
Defendant-Appellant.

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

No. 1:19-CR-00874(1)

Amy J. St. Eve,
*Circuit Judge.*¹

ORDER

Darius Morales appeals his 94-month sentence, arguing that, under § 2K2.1 of the Sentencing Guidelines, the district court should not have increased his offense level

* We previously granted the parties' joint motion to waive oral argument. *See* FED. R. APP. P. 34(a)(2)(C).

¹ Sitting by designation.

based on two prior state convictions for selling drugs. Because the court sentenced Morales in accordance with controlling circuit precedent, we find no error and affirm.

After Morales was convicted of possessing a firearm as a felon, 18 U.S.C. § 922(g)(1), he faced sentencing. Probation submitted its presentencing report (PSR), making two recommendations relevant here. First, Morales's base offense level was 24 because he had two prior felony convictions for a "controlled substance offense." U.S.S.G. § 2K2.1(a)(2). The PSR identified a 2011 Illinois conviction for the manufacture or delivery of cannabis and a 2009 Illinois conviction for the manufacture or delivery of cocaine. (Morales also had a "crime of violence" conviction that could have increased his base offense level under this Guideline.) Morales did not object to this offense-level recommendation. Second, the PSR recommended, and he objected to, a four-level increase for not only possessing the firearm as a felon but also discharging the weapon during the offense conduct, *id.* § 2K2.1(b)(6)(B), and a two-level increase for obstructing justice by fleeing from police, *id.* § 3C1.2. With a total offense level of 30 and a criminal history category of V, the PSR calculated a guidelines range of 151 to 188 months in prison, *see* U.S.S.G. Ch. 5, Pt. A, and decreased it to the statutory maximum of 120 months, *see* 18 U.S.C. § 924(a)(2).

The district court accepted the PSR's recommendations in part. It overruled Morales's objection to the firearm adjustment, finding by a preponderance of the evidence that Morales had discharged the gun that he was convicted of possessing. But it sustained his objection to the obstruction-of-justice adjustment. The new guidelines range, with an offense level of 28 and a criminal history category of V, dropped to 130 to 162 months and then to the statutory maximum of 120 months. After weighing the factors listed under 18 U.S.C. § 3553(a), the court imposed a prison term of 94 months.

On appeal Morales contends that his two Illinois convictions are not "controlled substance offenses" under the Guidelines. He reasons that his offenses involved state statutes that are categorically broader than those in the Controlled Substances Act, 21 U.S.C. § 802. If neither of his drug offenses are "controlled substance offenses" under that Act, Morales continues, his offense levels under the Guidelines should also decrease, yielding a lower guidelines range of 92 to 115 months. But, as he concedes, circuit law has rejected his argument: We have held that the Guidelines do not mirror the Controlled Substances Act's definition of "controlled substances"; instead, the Guidelines define that term "broadly" to "include state-law offenses" involving controlled substances. *United States v. Ruth*, 966 F.3d 642, 654 (7th Cir. 2020).

Morales urges us to reconsider *Ruth*, but he has forfeited the argument. He highlights the circuit split over how to define a “controlled substance” under the Guidelines and maintains that *Ruth* conflicts with Supreme Court case law and the Guidelines’ goal of sentence uniformity. The government responds that, by failing to object to this aspect of his base offense level while advancing other objections at sentencing, Morales waived this argument and thereby extinguished all appellate review. See *United States v. Hammond*, 996 F.3d 374, 399 (7th Cir. 2021). We will accept for the sake of argument that Morales did not have a strategic reason for withholding this argument at sentencing and that he has merely forfeited the argument. See *id.* at 399–400.

As a forfeited argument, we review whether the district court plainly erred by accepting that Morales’s offense level was based on the two “controlled substance” convictions. See *id.* at 400. A plain error must be a “clear or obvious” defect. *Id.* But because *Ruth* forecloses Morales’s argument, the district court did not plainly err in applying it, which even today remains binding precedent in this circuit. See, e.g., *United States v. Wallace*, 991 F.3d 810, 816 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 362 (2021); *United States v. Jones*, 56 F.4th 455, 503 (7th Cir. 2022).

AFFIRMED