

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 20, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMAL LORENCE DAWSON,

Defendant - Appellant.

No. 25-1096
(D.C. No. 1:24-CR-00155-NYW-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, EBEL**, and **CARSON**, Circuit Judges.

The government must prove facts that enhance a defendant’s sentence under the United States Sentencing Guidelines by a preponderance of the evidence. That is, it must show that the fact is more likely true than not. Once the district court finds the government has met that burden, we will reverse only if that finding is clearly erroneous.

Defendant Jamal Lorence Dawson pleaded guilty to being a felon in possession of a firearm. Before sentencing, the presentence report (“PSR”) assigned him criminal history points based on U.S.S.G. § 4A1.2(d)(2)(A) for two of his previous juvenile sentences. Under this provision, a previous sentence qualifies for criminal history points

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

if a defendant served it within five years of his instant offense. Defendant objected to these criminal history points, arguing that the government failed to prove he served those juvenile sentences within five years of his instant offense. The district court overruled the objection, adopted the presentence report, and applied the criminal history points. Our jurisdiction arises under 28 U.S.C. § 1291. We affirm.

I.

At age thirteen, Defendant committed four juvenile offenses in Colorado, including “Trespass 1- Auto with Intent to Commit Crime (Felony),” and “Motor Vehicle Theft/Aggravated 1- \$20K-\$100K (Felony).” After a trial, a jury convicted Defendant of the trespass offense, and Defendant later pleaded guilty to the auto-theft offense. On January 6, 2017, a Colorado juvenile court imposed a sentence for each of these offenses of zero-to-two years in the Division of Youth Services (“DYS”), to run concurrently with each other. We refer to these sentences as Defendant’s trespass and first auto-theft sentences.

Defendant escaped from DHS custody on October 8, 2017. During his forty-four days at large, Defendant stole a BMW from a dealership. This offense occurred on November 18, 2017. Officers located and arrested Defendant three days later.

On January 2, 2018, Defendant pleaded guilty to the October 8, 2017 escape. The Colorado juvenile court sentenced him to one year in DHS, to run consecutively to his trespass sentence. We refer to this escape sentence as Defendant’s first escape sentence. About a month later, on February 7, 2018, Defendant pleaded guilty to the November 18, 2017 auto theft. The juvenile court sentenced him to one year in DHS, to run

concurrently with his first escape sentence. We refer to this auto-theft sentence as Defendant's second auto-theft sentence.

Defendant escaped from his trespass and first auto-theft sentences for the second time on August 18, 2018. During the sixty-four days he remained at large, Defendant committed two additional felonies. First, he committed attempted murder when he shot at a car with three girls inside. Second, he stole another vehicle from a dealership on October 14, 2018. Officers located and arrested Defendant on October 21, 2018. On August 7, 2019, Defendant pleaded guilty to the October 14, 2018 auto theft and the August 18, 2018 escape. The juvenile court sentenced him to two years in DYS for both offenses, to run consecutively to his first escape and second auto-theft sentences. We refer to Defendant's October 14, 2018 auto-theft sentence as his third auto-theft sentence and his August 18, 2018 escape sentence as his second escape sentence.

We now turn to Defendant's current federal conviction and sentence. On February 12, 2024, a Mercedes went missing from a dealership in Aurora, Colorado. The next day, February 13, 2024, Officers tracked Defendant in the Mercedes and arrested him. As officers arrested him, a semiautomatic pistol fell out of Defendant's pocket. A federal grand jury indicted Defendant, charging him as a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Defendant pleaded guilty to this offense.

Before sentencing, United States Probation Office prepared a PSR. The PSR calculated a total offense level of twenty-three and a criminal history category of V, setting Defendant's advisory Guidelines range at 84–105 months' imprisonment.

In calculating Defendant’s criminal history category, the PSR assigned Defendant two criminal history points each for his first escape and second auto-theft sentences under U.S.S.G. § 4A1.2(d)(2)(A).¹ This provision instructs courts to “add 2 points under § 4A1.1(b) for each adult or *juvenile sentence* to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense.” U.S.S.G. § 4A1.2(d)(2)(A) (emphasis added). To satisfy U.S.S.G. § 4A1.2(d)(2)(A)’s five-year requirement, the government had to show by a preponderance of the evidence that Defendant was serving his first escape and second auto-theft sentences until at least February 13, 2019 (within five years of his instant offense on February 13, 2024).

The PSR acknowledged that the discharge dates for his first escape sentence and second auto-theft sentence were unknown. Still, it concluded that both sentences qualified for two criminal history points under U.S.S.G. § 4A1.2(d)(2)(A). In so concluding, the PSR explained that the Colorado juvenile court imposed Defendant’s third auto-theft and second escape sentences to run consecutively to his first escape and second auto-theft sentences on August 7, 2019. According to the PSR, this indicated that Defendant was still serving his first escape and second auto-theft sentences on August 7, 2019—six months’ longer than necessary to assign the criminal history points.

¹ As a reminder, Defendant’s first escape sentence refers to his October 18, 2017 escape. The juvenile court sentenced Defendant for this first escape to one-year in DYS custody to run consecutively to his first auto-theft offense. Defendant’s second auto-theft sentence refers to Defendant’s November 18, 2017 auto theft. The juvenile court sentenced Defendant for this second auto theft to one-year in DYS to run concurrently with his first escape sentence.

Defendant objected to the PSR assigning two criminal history points to his first escape and second auto-theft sentences. He argued that the juvenile court imposing consecutive sentences did not establish “by a preponderance of the evidence that the one-year concurrent sentences in [his first escape and second auto-theft cases] had not been discharged by August 9, 2019.” In response, the government submitted three docket sheets confirming that the juvenile court imposed his third auto-theft and second escape sentences to run consecutively to his first escape and second auto-theft sentences.

The district court sentenced Defendant on February 26, 2025. At sentencing, Defendant renewed his objection, arguing that “just as much as we are struggling to understand what sentences were in existence, a Colorado State Court may not have known. And just by simply running it consecutive doesn’t establish that that sentence was still in existence.”

The government countered that “it seems unlikely that a court would impose a sentence to run consecutively to prior sentences if they had discharged previously or, in this case, nearly 6 months prior.” The district court also asked the government “if it was supposed to infer from [the] record that [Defendant] was still serving a sentence in [his first escape and second auto-theft cases] when he was sentenced [on his third auto-theft offense,]” and the government responded in the affirmative.

The district court found that the government had shown by a preponderance of the evidence that Defendant was still serving his first escape and second auto-theft sentences as of February 13, 2019, and applied two points under U.S.S.G. § 4A1.2(d)(2)(A) to each sentence. In doing so, the district considered (1) that Defendant’s first escape sentence

and second auto-theft sentence ran concurrently with each other but consecutively to his trespass and first auto-theft sentences, (2) that Defendant escaped from DYS custody while serving his trespass and first auto-theft sentences on August 18, 2018 and did not return to DYS custody until October 21, 2018, (3) that Defendant still had to complete his trespass and first auto-theft sentences as of October 21, 2018, and (4) that Defendant's August, 18 2018 escape was not his first escape. The district court adopted the PSR's criminal history calculation and varied downward from the advisory Guidelines range of 84–105 months' imprisonment, sentencing Defendant to 60 months' imprisonment. Defendant now appeals.

II.

For purposes of sentencing, a district court must make factual findings supporting a sentencing enhancement by a preponderance of the evidence, United States v. Hooks, 551 F.3d 1205, 1216–17 (10th Cir. 2009) (citing United States v. Munoz-Tello, 531 F.3d 1174, 1181 n.2 (10th Cir. 2008)), and we review such findings for clear error, id. (citing United States v. Swanson, 253 F.3d 1220, 1222 (10th Cir. 2001)). Under this standard, we will reverse only where a factual finding is “wholly without factual support in the record,” such that our independent review leaves us “definitely and firmly convinced that a mistake has been made.” Id. at 1217 (first quoting United States v. Ivory, 532 F.3d 1095, 1103 (10th Cir.2008); and then citing United States v. Cardenas-Alatorre, 485 F.3d 1111, 1119 (10th Cir. 2007)). And we review de novo “[w]hether the facts found by the district court are sufficient to warrant an enhancement.” United States v. Martinez, 602 F.3d 1156, 1158 (10th Cir. 2010).

III.

On appeal, Defendant raises two arguments. First, he argues that the district court erred when it relied on docket sheets to enhance his advisory Guideline range. Second, Defendant argues that even if the district court permissibly relied on the three docket sheets, the evidence from the docket sheets still does not support the district court assigning two criminal history points under U.S.S.G. § 4A1.2(d)(2)(A). We address each argument in turn.

A.

In response to Defendant’s objection, the government introduced three juvenile docket sheets. The docket sheets show Defendant’s juvenile sentencing history, including that on August 7, 2019, a juvenile court imposed Defendant’s third auto-theft and second escape sentences to run consecutively to his first escape and second auto-theft sentences.

On appeal, Defendant argues that the district court erred by relying on these docket sheets. He contends that the district court should have relied only on the type of “reliable judicial records” approved in Taylor v. United States, 495 U.S. 575 (1990), and Shepard v. United States, 544 U.S. 13 (2005), to establish the date of his discharge from his prior juvenile sentences for purposes of U.S.S.G. § 4A1.2(d)(2)(A).² But we do not reach this issue because Defendant did not raise it to the district court and did not argue

² Taylor and Shepard address the types of documents that a court can rely on when determining whether a prior conviction resulting from a guilty plea counts as a violent felony for purposes of the Armed Career Criminal Act. Shepard, 544 U.S. at 24.

for plain error in his opening brief. “When an appellant fails to preserve an issue and also fails to make a plain-error argument on appeal, we ordinarily deem the issue waived (rather than merely forfeited) and decline to review the issue at all—for plain error or otherwise.” United States v. Leffler, 942 F.3d 1192, 1196 (10th Cir. 2019) (citing Richison v. Ernest Grp., Inc., 634 F.3d 1123, 1130–31 (10th Cir. 2011)). Defendant contends that he preserved this issue by objecting to the government’s docket-sheet exhibits and citing United States v. Erlinger, 602 U.S. 821, 841 (2024). The record says otherwise.

Defendant never objected to the admission of the docket sheets, nor did he argue that the district court could not rely on them under Taylor or Shepard. Instead, he conceded to the information in the docket sheets and argued only that this information failed to prove, by a preponderance of the evidence, that he remained in custody after February 13, 2019.

Nor did Defendant’s reference to Erlinger preserve the issue. He cited Erlinger primarily for the proposition that “[a] court ordering a sentence to run consecutively to another sentence does not establish by a preponderance of the evidence that the older sentence was in existence at the time of the more recent sentence.” Defendant did refer to Shepard in a quoted parenthetical, but that was before the government introduced the docket sheets in response to his objection. At no point did Defendant argue that the docket sheets “lacked sufficient indicia of reliability,” as required by U.S.S.G. § 6A1.3, or that they were an impermissible source of proof under Taylor or Shepard.

Because Defendant failed to raise this issue to the district court and failed to argue for plain error in his opening brief, Defendant waived this argument.

B.

Next, Defendant argues that even if the district court properly considered the docket sheets, the government failed to prove that he was serving his first escape and second auto-theft sentences on February 13, 2019. He emphasizes that the government could not produce complete records identifying his precise release and discharge dates for those sentences. In his view, those gaps left open the possibility that he completed both sentences before the five-year cutoff under U.S.S.G. § 4A1.2(d)(2)(A), and the district court could not fill the gaps through speculation.³

We disagree. The government did not have to prove Defendant's exact discharge dates. It had to prove that Defendant was more likely than not serving his first escape and second auto-theft sentences on February 13, 2019. See United States v. Washington, 890 F.3d 891, 896 (10th Cir. 2018) (stating that preponderance of the evidence standard is satisfied when fact is more likely than not). And a district court can rely on

³ Defendant also suggests that the government's failure to provide any records showing when he finished serving his sentences deprived him of an opportunity to contest the government's claims in violation of Federal Rule of Criminal Procedure 32. We disagree. Rule 32 contemplates full adversary testing of the issues relevant to a Guidelines sentence by requiring that a defendant have the opportunity to "comment upon the probation officer's determination and on other matters relating to the appropriate sentence." Burns v. United States, 501 U.S. 129, 135 (1991). Defendant received exactly that opportunity. He reviewed the presentence report, filed written objections challenging its factual assertions, and argued those objections at sentencing. The government likewise disclosed the docket sheets before sentencing, giving Defendant the opportunity to challenge their reliability and significance.

circumstantial evidence and the reasonable conclusions that flow from this evidence to determine whether the government has met this standard. See United States v. Cox, 505 F. App'x 692, 696 (10th Cir. 2012) (unpublished) (holding that underlying circumstantial evidence and reasonable inferences drawn therefrom supported the district court's factual finding by a preponderance of the evidence). Further, Defendant challenges a factual finding, so we will reverse only if the record leaves us with a definite and firm conviction that the district court made a mistake. Hooks, 551 F.3d at 1217 (first quoting Ivory, 532 F.3d at 1103; and then citing Cardenas-Alatorre, 485 F.3d at 1119).

We are not left with a definite and firm conviction that the district court made a mistake when it concluded that Defendant was still serving his first escape and second auto-theft sentences on February 13, 2019. First, on August 7, 2019, the Colorado juvenile court ordered Defendant's third auto-theft and second escape sentences to run consecutively to his first escape and second auto-theft sentences. Under Colorado law, a consecutive sentence begins only after the earlier sentence ends. The two sentences neither overlap nor leave a gap between them. See Brinklow v. Riveland, 773 P.2d 517, 520 (Colo. 1989) (explaining that consecutive sentence "begins to run only after the completion of a prior sentence."); see also 15 Colo. Prac., Criminal Practice & Procedure § 20.22 (2d ed.) (defining a consecutive sentence as "one which commences at the termination of another sentence, and the offender serves only one sentence at a time").

By ordering Defendant's third auto-theft and second escape sentences to run consecutively to his first escape and second auto-theft sentences, the juvenile court treated Defendant's first escape and second auto-theft sentences as undischarged on the

date of sentencing, August 7, 2019. Otherwise, the court would have ordered the August 7, 2019 sentences to follow sentences that already expired, creating the very gap that consecutive sentencing does not contemplate. Based on this fact, the district court concluded that Defendant was more likely than not serving his first escape and second auto-theft sentences in August 2019. Indeed, a district court may presume that state judges “know and follow the law.” Dunn v. Reeves, 594 U.S. 731, 739 (2021). The district court did not clearly err in applying this presumption to conclude that the juvenile court understood the legal effect of imposing consecutive sentences and in fact imposed consecutive sentences.

Other evidence in the record also supports the district court’s conclusion. On January 2, 2018, the Colorado juvenile court sentenced Defendant to one year in DYS custody for his first escape offense. Defendant later received another one-year sentence for his second auto-theft offense, which ran concurrently with his first escape sentence. Before he completed his sentences for his trespass and first auto-theft offenses, Defendant escaped from DYS custody for the second time on August 18, 2018, and remained at large until October 21, 2018. Colorado law gave him no credit for the sixty-four days he spent at large from August 18 to October 21, 2018. See Colo. Rev. Stat. § 19-2-921(11) (2018), repealed and recodified at Colo. Rev. Stat. § 19-2.5-1518(8).

At sentencing, defense counsel conceded that Defendant was still serving his trespass and first auto-theft sentences both when he escaped for the second time on

August 18, 2018, and when officers returned him to DYS custody on October 21, 2018.⁴ As a result, Defendant could not have started serving his first one-year escape sentence, or the concurrent sentence for his second auto-theft offense, before October 21, 2018. That left fewer than four months before the February 13, 2019 cutoff. During that period, Defendant would have had to complete the remainder of his trespass and first auto-theft sentences and then serve his first escape and second auto-theft sentences. That timeline is particularly unlikely because Defendant escaped while serving his trespass and first auto-theft sentences and received no credit toward those sentences for the sixty-four days he remained at large. This four-month timeline taken together with the juvenile court's later decision to order Defendant's August 7, 2019 sentences to run consecutively to his first escape and second auto-theft sentences support the district court's finding that Defendant was more likely than not serving his first escape and second auto-theft sentences on February 13, 2019. Thus, this finding was not clearly erroneous.

Although the government could not identify Defendant's precise discharge dates, the government did not have to prove them to a certainty. Instead, the government had to show only that Defendant was more likely than not serving the relevant sentences on

⁴ At sentencing, defense counsel conceded that Defendant was serving his trespass and first auto-theft sentences on October 21, 2018. When the district court observed that Defendant was still serving his first auto-theft sentence on October 21, 2018, defense counsel responded, "That's right." Then the district court explained that Defendant had to finish serving out his trespass and first auto-theft sentences, which ran concurrently, before he could start serving his first escape conviction. Counsel responded, "I agree. I agree that that is how it has to work." Counsel then acknowledged that, on October 21, 2018, Defendant was still presumably serving his trespass sentence, which he had escaped from.

February 13, 2019. The district court found that it did, and, for the reasons we set forth above, the record does not leave us with a definite and firm conviction that the district court made a mistake. The district court therefore did not clearly err when it assigned two criminal history points under U.S.S.G. § 4A1.2(d)(2)(A) to Defendant's first escape and second auto-theft sentences.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge