

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

December 9, 2008

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARVIN A. CORDOVA-LIMA,

Defendant-Appellant.

No. 08-3098

(D.C. No. 5:06-CR-40084-JAR-2)

(D. Kan.)

ORDER AND JUDGMENT*

Before **O'BRIEN, McKAY, and GORSUCH**, Circuit Judges.

Defendant was convicted by a jury on four drug counts and sentenced to a 135-month term of imprisonment. He argues on appeal that the district court committed procedural error in calculating his sentence by adding a one-level enhancement for the obstruction of justice rather than either applying the two-level enhancement provided by the Sentencing Guidelines or concluding that the enhancement did not apply.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

After examining the briefs and the appellate record, this panel has determined unanimously to grant counsel's request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f).

After reviewing the transcript of the sentencing hearing and the statement of reasons provided by the district court, we are persuaded that the court did not improperly apply a one-level enhancement for obstruction. Rather, we conclude that the court correctly calculated the applicable Sentencing Guidelines range based on the two-level obstruction enhancement provided by USSG § 3C1.1, then permissibly varied below this advisory range based on the 18 U.S.C. § 3553(a)(1) factors. We thus conclude that the district court did not commit procedural error in sentencing Defendant, and we accordingly **AFFIRM** Defendant's conviction and sentence.

Entered for the Court

Monroe G. McKay
Circuit Judge