[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
APRIL 25, 2003
THOMAS K. KAHN
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No. 02-15233
Non-Argument Calendar

D.C. Docket No. 02-20319-CR-KMM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DENNIS ROY ANDERSON,
a.k.a. Derro Dillion Drake,

Defendant-Appellant.

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

(April 25, 2003)

Before CARNES, BARKETT and HULL, Circuit Judges.

PER CURIAM:

Dennis Roy Anderson pleaded guilty to attempted illegal reentry into the United States after deportation, in violation of 8 U.S.C. §§ 1326(a) and (b)(2), and

received a 24-month sentence. Anderson contends that the district court should not have imposed the 12-level enhancement provided by U.S.S.G. § 2L1.2(b)(1)(B) because he had not previously been deported after a "conviction" within the meaning of that section. Anderson had been deported in 1991 after he pleaded nolo contendere to a Florida felony drug offense. The state court had withheld adjudication of guilt and imposed a sentence of time served. Anderson argues that a nolo contendere plea with adjudication withheld does not qualify as a conviction within the meaning of § 2L1.2(b)(1)(B) of the Guidelines.

Anderson relies on United States v. Willis, 106 F.3d 966, 969 (11th Cir. 1997), which held that a plea of nolo contendere with adjudication withheld is not a conviction for purposes of 18 U.S.C. § 922(g)(1) because a nolo contendere plea is not a conviction under Florida law. Willis is not controlling here, though, because the statutory scheme at issue in that case mandated that the term "conviction" be defined according to state law, id. at 967-68, and there is no similar requirement under the Guidelines provision at issue in this case. We thus look to federal law for the applicable definition of "conviction." See United States v. Mejias, 47 F.3d 401, 403-04 (11th Cir. 1995).

Section 2L1.2(b)(1) provides: "If the defendant previously was deported, or unlawfully remained in the United States, after . . . (B) a conviction for a felony

drug trafficking offense for which the sentence imposed was 13 months or less, increase by 12 levels." U.S.S.G. § 2L1.2(b)(1)(B). The Sentencing Commission did not define "conviction" as that term is used in § 2L1.2. But Congress has defined "conviction" as used in 8 U.S.C. § 1326 – one of the two statutory sections to which § 2L1.2 applies – as follows:

> The term "conviction" [as used in the chapter Immigration and Nationality] means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where–
>
> (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
>
> (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

8 U.S.C. § 1101(a)(48)(A) (emphasis added). Although § 2L1.2 does not explicitly refer to § 1101(a)(48)(A), we agree with the Tenth Circuit that the term "conviction" as used in § 2L1.2(b) is governed by the definition set forth in § 1101(a)(48)(A). See United States v. Zamudio, 314 F.3d 517, 521-22 (10th Cir. 2002).

A conviction for purposes of § 2L1.2(b)(1)(B) therefore includes a nolo contendere plea with adjudication withheld as long as some punishment, penalty, or restraint on liberty is imposed. Anderson entered a plea of nolo contendere and

was punished with 22 days imprisonment, the time he had served until he pleaded. Anderson's prior drug offense thus meets the definition of a "conviction" in § 1101(a)(48)(A) and is a "conviction" for § 2L1.2 purposes. Moreover, we have similarly concluded that the term "conviction" as used in other statutory and Guidelines provisions includes a nolo contendere plea with adjudication withheld. See United States v. Fernandez, 234 F.3d 1345, 1346 (11th Cir. 2000) (interpreting "conviction" under U.S.S.G. § 2K2.1(a)(2)); Mejias, 47 F.3d at 404 (interpreting "conviction" under 21 U.S.C. § 841(b)(1)(B)); United States v. Jones, 910 F.2d 760, 761 (11th Cir. 1990) (interpreting "conviction" under U.S.S.G. § 4B1.1).

We also reject Anderson's contention that the sentence imposed for his drug offense, 22 days time served, was de minimis and therefore transformed his felony drug conviction into a misdemeanor. Anderson was convicted of a felony drug offense and deported as a result. As such, the district court correctly determined that the 12-level enhancement under § 2L1.2(b)(1)(B) applies to him.

AFFIRMED.