

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-13706

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT APRIL 29, 2008 THOMAS K. KAHN CLERK

D. C. Docket No. 06-00012-CR-6

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALBERTO ESPINO CRUZ,

Defendant-Appellant.

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

(April 29, 2008)

Before BIRCH and DUBINA, Circuit Judges, and GOLDBERG,* Judge.

PER CURIAM:

*Honorable Richard W. Goldberg, United States Court of International Trade Judge, sitting by designation.

Appellant, Alberto Espino Cruz (“Cruz”), pled guilty to one count of conspiracy to distribute more than five grams of methamphetamine. The district court sentence Cruz to 87 months imprisonment and Cruz then perfected this appeal.

The issue on appeal is whether the district court relied on impermissible factual considerations in sentencing Cruz to a sentence at the top of the applicable Guidelines range.

“Whether a [sentencing] factor is impermissible is a question of law [this court] reviews *de novo*.” *United States v. Williams*, 456 F.3d 1353, 1361 (11th Cir. 2006). The party challenging the sentence bears the burden of showing that the district court considered an unreasonable factor. *Id.* Where a party fails to raise an objection during the sentencing, that objection is waived on appeal and reviewed for plain error only. *United States v. Zinn*, 321 F.3d 1084, 1088 (11th Cir. 2003).

After reviewing the record, reading the parties’ briefs, and having the benefit of oral argument, we conclude that the district court did not commit plain error¹ in sentencing Cruz. *See United States v. Rodriguez*, 398 F.3d 1291, 1298 (2005). Accordingly, we affirm Cruz’s sentence.

¹ Counsel for Cruz conceded at oral argument that plain error review applies in this case.

AFFIRMED.