

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 13-10657
Non-Argument Calendar

D.C. Docket No. 1:12-cr-20674-UU-3

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEPHON KENDRICKS,

Defendant-Appellant.

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

(February 4, 2014)

Before TJOFLAT, JORDAN, and EDMONDSON, Circuit Judges.

PER CURIAM:

Stephon Kendricks appeals his below-guideline mandatory minimum 60-month sentence, imposed after pleading guilty to conspiracy to possess with intent to distribute 500 grams or more of cocaine. The district court -- following an evidentiary hearing -- did not err in denying Kendricks safety valve relief because Kendricks failed to meet his burden of proving that his safety-valve statement was sufficient, and the court's determination that Kendricks fell short of truthfully providing all of the information that he had about his offense was not clearly erroneous. Where a fact pattern gives rise to two reasonable and different constructions, "the factfinder's choice between them cannot be clearly erroneous." *United States v. Saingerard*, 621 F.3d 1341, 1343 (11th Cir. 2010) (quotation omitted).

The district court probably did not err and did not plainly err in failing to find (without prompting from the defendant) that the government breached Kendricks' plea agreement by expanding the scope of the required safety-valve disclosure statement to include information about prior drug transactions. For background, see *United States v. De La Garza*, 516 F.3d 1266, 1269 (11th Cir. 2008); *United States v. Figueroa*, 199 F.3d 1281, 1283 (11th Cir. 2000).

AFFIRMED.