

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13134
Non-Argument Calendar

D.C. Docket No. 1:19-cr-20133-RNS-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ALDO DE SOUZA FERREIRA,

Defendant - Appellant.

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

(March 9, 2020)

Before MARTIN, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

Aldo De Souza Ferreira pled guilty to unlawful importation of at least 500 grams of cocaine, in violation of 21 U.S.C. § 952(a). The district court sentenced

him to five-years imprisonment, the statutory minimum for this offense. See id. § 960(b)(2)(B)(ii). De Souza argues on appeal that the district court should have applied the safety-valve provision in the United States Sentencing Guidelines, which would have permitted the court to sentence him “without regard to any statutory minimum sentence.” U.S.S.G. § 5C1.2(a); see also 18 U.S.C. § 3553(f) (setting forth statutory basis for application of the safety valve).

In order to qualify for the safety valve, a defendant must satisfy five factors. The only one disputed in this case is the “tell-all” factor, which requires the defendant to “truthfully disclose to the government all information and evidence that he has about the offense and all relevant conduct.” United States v. Yate, 176 F.3d 1309, 1310 (11th Cir. 1999) (per curiam) (citing U.S.S.G. § 5C1.2(a)(5)). De Souza bears the burden of showing he truthfully supplied to the government “all the information that he possesses about his involvement in the offense, including information relating to the involvement of others and to the chain of the narcotics distribution.” United States v. Cruz, 106 F.3d 1553, 1557 (11th Cir. 1997).

In the presentence investigation report, the United States Probation Department recommended against applying the safety valve to De Souza because he had “not been debriefed or provided a truthful statement to the government.” De Souza objected at sentencing. His counsel stated that De Souza had “given a safety valve statement . . . to the government and to the probation officer where he

outline[d] in a summary fashion what happened in the case.” Counsel acknowledged that “because of certain reasons, he did not disclose the true identity of certain people who were also involved.” Counsel offered to explain to the district court why De Souza had done this and why this should not affect his eligibility for the safety valve.

The district court overruled the objection without hearing further explanation from counsel:

THE COURT: You don't have to explain to me. You have to explain to the government. That's the whole point of the safety valve is I may not have enough evidence to make a case to get a 5K1.1 [departure for providing “substantial assistance” to authorities], but I'm telling you everything that I know, okay, not like this is what I did and I did it with A, B, and C.

Now, he may want to do extra time to protect A, B, and C because it's his brother, father, or best friend or somebody like that. But if he wants the safety valve, he's got to tell the government truthfully everything he knows about the case.

The court rejected counsel's argument that a defendant qualifies for the safety valve by “admitting to everything he did and what happened” but not “cooperating to the degree of giving [the government] the identity of other individuals.” The court asked De Souza to confirm his decision:

THE COURT: All right. Is that correct, Mr. De Souza, you don't want to meet with the government and tell them everything you know about the case understanding that could avoid a five-year minimum mandatory?

THE DEFENDANT: Correct, Your Honor.

The district court then proceeded to sentence De Souza to the statutory minimum, while at the same time noting De Souza probably would have received a downward variance of about two years with the safety valve.

“When reviewing a district court’s safety-valve decision, we review for clear error a district court’s factual determinations, and de novo the court’s legal interpretation of the statutes and sentencing guidelines.” United States v. Milkintas, 470 F.3d 1339, 1343 (11th Cir. 2006) (per curiam) (alterations adopted and quotation marks omitted). “For a factual finding to be clearly erroneous, we must be left with a definite and firm conviction that the court made a mistake.” United States v. Tejas, 868 F.3d 1242, 1244 (11th Cir. 2017) (per curiam).

We conclude the district court did not clearly err when it found De Souza ineligible for the safety valve. Contrary to De Souza’s argument, the district court did not “[b]lindly defer[] to the government” when it found he had not been forthcoming enough to meet the requirements of the tell-all factor. The court made an independent finding that De Souza did not qualify for the safety valve because he did not provide the government with the identities of all participants involved in the offense to which he pleaded guilty. De Souza does not dispute that this is the

case; indeed, counsel confirmed it at sentencing.¹ Nevertheless, after having said that De Souza's failure to provide this information rendered him ineligible for the safety valve, the district court still offered De Souza one last chance to qualify. De Souza declined. This reasoned decision-making process meets the requirement in Guideline § 5C1.2(a) that "the court" must determine whether the defendant qualifies for the safety valve.

AFFIRMED.

¹ As the government points out, De Souza did not actually argue at sentencing that he "truthfully provided to the Government all information" regarding his offense of conviction. U.S.S.G. § 5C1.2(a)(5). Rather, counsel wanted a sidebar to "explain why [De Souza] did not" identify certain other individuals. No matter his explanation, De Souza could not have qualified for the safety valve without divulging all that he knew: "The plain language of § 5C1.2(a)(5) contains no exception to its tell-all requirement." United States v. Burgos-Vasquez, 784 F. App'x 663, 667 (11th Cir. 2019) (per curiam) (unpublished); see Cruz, 106 F.3d at 1557 (requiring a defendant to provide "information relating to the involvement of others" in order to qualify for the safety valve).