[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-12253

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO SOZA-COLIN,
a.k.a.
MARCO MONDRAGON-BELMONTES
a.k.a.
MARCOS ANTONIO MONDRAGON,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 3:22-cr-00017-CAR-CHW-1

Before WILSON, LAGOA, and DUBINA, Circuit Judges.

PER CURIAM:

Appellant Antonio Soza-Colin appeals his sentence of 95 months' imprisonment for illegally reentering the United States after a removal following a conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a), (b)(2). Soza-Colin argues that the district court's statement at the sentencing hearing that the decision to grant him "credit" would be up to the Federal Bureau of Prisons ("BOP") shows that the district court mistakenly believed that it lacked the authority to grant him a downward departure for the time he spent in state and Immigration and Customs Enforcement ("ICE") custody. Soza-Colin asserts that this court should weigh in his favor any ambiguity the district court had in its sentencing authority. Having reviewed the record and read the parties' briefs, we affirm the district court's imposition of a 95-month sentence for Soza-Colin.

I.

While we may not review the discretionary decision of a district court's refusal to grant a downward departure, we may conduct a *de novo* review of the question whether the district court mistakenly believed it lacked the authority to grant such a departure.

United States v. Pressley, 345 F.3d 1205, 1209 (11th Cir. 2003). However, where a party raises an issue with his or her sentence for the first time on appeal, we review the issue for plain error. *See United States v. Ramirez-Flores*, 743 F.3d 816, 821 (11th Cir. 2014). "To prevail under the plain error standard, an appellant must show: (1) an error occurred; (2) the error was plain; (3) it affected his substantial rights; and (4) it seriously affected the fairness of the judicial proceedings." *Id.* at 822.

II.

In the context of a *de novo* review of a defendant's claim that the district court mistakenly believed it lacked the authority to depart, "we maintain a presumption in the district court's favor." *United States v. Rodriguez*, 34 F.4th 961, 975 (11th Cir. 2022), *cert. denied*, 143 S. Ct. 580 (2023). Thus, "when nothing in the record indicates otherwise, we assume the sentencing court understood it had authority to depart downward." *United States v. Chase*, 174 F.3d 1193, 1195 (11th Cir. 1999). For example, where the district court does "not express any ambivalence regarding its authority to depart and the evidence does not otherwise reflect the district court misapprehended its authority," we "assume the district court understood it had authority to depart downward and simply decided not to exercise its discretionary authority." *Id.* Additionally, "[w]e do not require a district court to expressly say whether it believes it has the authority to grant a departure." *Rodriguez*, 34 F.4th at 975.

In *United States v. Webb*, we resolved an ambiguity as to whether the district court believed it lacked the authority to depart

in favor of the defendant. 139 F.3d 1390, 1395 (11th Cir. 1998). There, the district court apparently agreed "with both the proposition that it lacked the authority to depart as well as the proposition that it had the discretion to depart but chose not to do so." *Id.* (citation omitted). Thus, we noted that, "on balance . . . the record more strongly suggest[ed] that the court believed that it was not authorized to depart downward." *Id.*

A "departure" generally refers to a sentencing court's "imposition of a sentence outside the applicable guideline range or of a sentence that is otherwise different from the guideline sentence," and a "downward departure" describes a "departure that effects a sentence less than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise less than the guideline sentence." U.S.S.G. § 1B1.1 comment. (n.1(F)). "Credit," by contrast, refers to time awarded "toward the service of a term of imprisonment for any time [the defendant] has spent in official detention prior to the date the sentence commences—(1) as a result of the offense for which the sentence was imposed; or (2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed[.]" 18 U.S.C. § 3585(b). Unlike a downward departure, a court may not award credit at sentencing. *United States v. Wilson*, 503 U.S. 329, 333, 112 S. Ct. 1351, 1354 (1992) ("§3585(b) does not authorize a district court to compute the credit at sentencing"). After the district court sentences a defendant, the Attorney General, through the BOP, has the responsibility of determining the amount of jail

time credit and administering the sentence. *Id.* at 335, 112 S. Ct. at 1354-55.

III.

The record demonstrates that because Soza-Colin did not object to his sentence or argue that the court misunderstood its authority to grant a departure in the district court, we review the court's decision for plain error. *See Ramirez-Flores*, 743 F.3d at 821. Unlike *Webb*, the record in this case does not indicate that the district court believed it lacked the authority to depart downward from the guideline range. Soza-Colin's request for "credit" for the time he served in state and ICE custody was not a request for a "downward departure," and the district court's response that Soza-Colin's receipt of "credit" would be "up to the Bureau of Prisons" was a correct statement of the law. There is nothing in the record to indicate that the district court used the terms "credit" and "downward departure" interchangeably such that the district court created an ambiguity in its authority to depart downward. Thus, the district court did not commit an error for the purposes of plain error review.

Accordingly, based on the aforementioned reasons, we affirm Soza-Colin's 95-month sentence.

AFFIRMED.