

United States Court of Appeals
For the Eighth Circuit

No. 25-2870

United States of America

Plaintiff - Appellee

v.

Roberto Orellana

Defendant - Appellant

No. 25-2917

United States of America

Plaintiff - Appellee

v.

Roberto Carlos Gonzales Miranda

Defendant - Appellant

Appeals from United States District Court
for the District of South Dakota - Northern

Submitted: September 21, 2026
Filed: October 19, 2026

Before LOKEN, ARNOLD, and ERICKSON, Circuit Judges.

ARNOLD, Circuit Judge.

Roberto Miranda and Roberto Orellana drove together to a restaurant parking lot where an employee of a South Dakota casino gave them a box containing \$352,000. It turns out that the employee had been duped into handing over the money on the casino's behalf. The men were charged with various federal offenses as a result, and they each eventually pleaded guilty to transporting stolen money and aiding and abetting the transport of stolen money. *See* 18 U.S.C. §§ 2314, 3237, and 2. Orellana also pleaded guilty to illegal reentry. *See* 8 U.S.C. § 1326(a). On appeal Miranda maintains that the district court incorrectly calculated his Sentencing Guidelines range and imposed a substantively unreasonable sentence. We dismiss his appeal in part and affirm his sentence. As for Orellana, he contends that the court improperly speculated that he was involved with a Mexican drug cartel. We agree, and so we vacate his sentence and remand the case for resentencing.

We begin with Miranda's contention that the district court miscalculated his Guidelines range. Miranda faults the district court for determining that he caused the owner of the casino—the Standing Rock Sioux Tribe—substantial financial hardship. That determination led to a two-level enhancement to his offense level under USSG § 2B1.1(b)(2)(A)(iii) and disqualified him from receiving a two-level reduction to his offense level under USSG § 4C1.1(a)(6). He says that his actions did not cause the tribe substantial financial hardship, while the government says that they did and that the dispute is academic anyway because Miranda waived this challenge when he entered into his plea agreement.

We agree with the government that Miranda waived this challenge. We will enforce an appeal waiver so long as the appeal falls within the scope of the waiver, the defendant agreed to the waiver knowingly and voluntarily, and application of the waiver wouldn't result in a miscarriage of justice. *See United States v. Merrival*, 182 F.4th 725, 727 (8th Cir. 2026). In his plea agreement, Miranda waived his right to appeal "any non-jurisdictional issues," which is a broad category into which his challenge comfortably falls. The parties agreed to some exceptions to this broad waiver, including one that permitted him to appeal the substantive reasonableness of a sentence above the Guidelines range. But it cannot reasonably be argued that any of these exceptions applies here; in fact, Miranda himself doesn't assert that he reserved the right to challenge his Guidelines calculation.

Miranda instead maintains that we shouldn't enforce the appeal waiver because he didn't knowingly enter into it. The record demonstrates otherwise. The plea agreement that Miranda signed quite clearly explains that he would give up any right to appeal except in limited circumstances. Miranda says that the district court didn't clearly explain the scope of his waiver. But the court specifically reviewed the appeal waiver with Miranda at his change-of-plea hearing. It told him that it would conduct a sentencing hearing in which it would listen to evidence and decide facts, and "[b]ased upon what I find the facts to be, I will decide what your advisory guideline range is, and I will then sentence you within the guideline range, below the guideline range, or above the guideline range." Miranda confirmed that he understood and that he had read and discussed the agreement with his attorney. After noting that Miranda could appeal a sentence above the Guidelines range, the court cautioned that "the problem and the danger to you in that regard is that I will be deciding what the facts are. And based upon what I find the facts to be, I will decide what your advisory guideline range is. And so as to all of those matters, you are taking your chances." Miranda again said that he understood. The court further explained that, except for those limited circumstances excluded from the appeal waiver, Miranda was giving up all right to appeal and that if it made a mistake and Miranda didn't like it, he was

“stuck with it.” Yet again, Miranda confirmed that he understood. The court’s explanation of the scope of Miranda’s appeal waiver and Miranda’s multiple affirmations that he understood it are sufficient to show that Miranda knowingly entered into the waiver. *Cf. United States v. St. Pierre*, 912 F.3d 1137, 1143 (8th Cir. 2019). We therefore dismiss this aspect of Miranda’s appeal.

Miranda also challenges the substantive reasonableness of the seventy-month sentence that the court imposed, which was an upward variance from the Guidelines-recommended sentence of 41–51 months. “We review a defendant’s challenge to substantive reasonableness under a highly deferential abuse-of-discretion standard.” *United States v. Rice*, 186 F.4th 1080, 1083 (8th Cir. 2026). In imposing sentence, the district court focused on the “pack of lies” that Miranda offered to minimize his involvement in the offense. For example, in a presentence interview he said that he did nothing more than merely accompany Orellana, that he thought the two were just going for a ride, and that he did not know he had committed a crime until he was arrested. Yet in the factual basis for his guilty plea, he admitted that he knew the money the casino employee handed them “was stolen, converted or taken by fraud” and that he “occasionally worked as a money mule for a criminal organization.”

According to Miranda, the district court gave too much weight to its belief that he had tried to mislead the court and had minimized his responsibility for the crime, while at the same time it failed to give enough weight to mitigating personal circumstances like his youth and the financial support he provided his family. We see no abuse of discretion in the court’s weighing of the relevant sentencing considerations. *See* 18 U.S.C. § 3553(a). Even though the court had already considered Miranda’s minimization of his role in the offense when it denied him credit for acceptance of responsibility, the court was free to consider Miranda’s lack of candor and efforts to shift blame when deciding to impose an upward variance. “[T]he district court was allowed to vary upwards on factors already accounted for by the Guidelines.” *United States v. Luscombe*, 950 F.3d 1021, 1032 (8th Cir. 2020);

see also United States v. Nicholas, 773 F. App'x 324, 326 (8th Cir. 2019) (unpublished per curiam). In addition, the district court heard argument about the very mitigating circumstances that Miranda now highlights. That the court did not assign them the weight he would have preferred is not an abuse of discretion. *See United States v. Noriega*, 35 F.4th 643, 652 (8th Cir. 2022).

We turn now to Orellana's appeal. At his sentencing hearing, the district court remarked that "the unfortunate thing of this kind of a case is they take the stolen money and get it to drug cartels in Mexico who are killing thousands of people in Mexico every year and poisoning Americans who take these illegal drugs that the drug cartels send up here." Orellana says that the court impermissibly speculated that the proceeds of the ruse would end up in the hands of Mexican drug cartels.

Before we address that contention, though, we must consider whether Orellana waived it when he entered into a plea agreement containing an appeal waiver identical to Miranda's. Again, that waiver bars appeal of "any non-jurisdictional issues" except, as relevant here, "the length of sentence for a determination of its substantive reasonableness" if the sentence is an upward variance. Orellana received an upward variance—his fifty-month sentence exceeds the Guidelines range of 30–37 months. So we must decide whether Orellana is challenging "the length of sentence for a determination of its substantive reasonableness" when he says that the district court relied on unsupported facts at sentencing.

On the one hand, when reviewing a sentence for its substantive reasonableness we often say that a court abuses its discretion when it "gives significant weight to an improper or irrelevant factor." *See, e.g., Rice*, 186 F.4th at 1083; *United States v. O'Connor*, 567 F.3d 395, 397 (8th Cir. 2009). So a court's placing significant weight on unsupported facts when fixing a defendant's sentence would seem to implicate the substantive reasonableness of Orellana's sentence and would therefore render it reviewable. On the other hand, we have recognized "the existence of a second line of

authority that characterizes a district court’s consideration of an allegedly improper or irrelevant factor as a procedural error rather than a challenge to substantive reasonableness.” *See O’Connor*, 567 F.3d at 397 n.3; *see also United States v. Lee*, 2026 WL 915461, at *2 n.2 (8th Cir. Apr. 3, 2026) (unpublished per curiam). If we follow that line of authority here, then Orellana’s appeal waiver would bar his contention. *See Lee*, 2026 WL 915461, at *2 n.2. The important point is that the type of challenge Orellana brings doesn’t neatly fall into a single category.

We think the appropriate resolution in the circumstances is not to enforce the appeal waiver against Orellana. “The government bears the burden to prove that the plea agreement clearly and unambiguously waives a defendant’s right to appeal, and we construe any ambiguities in the agreement against the government.” *United States v. Lugo-Barcenas*, 57 F.4th 633, 636 (8th Cir. 2023). Given that the challenge Orellana raises can fit the substantive-reasonableness mold, we think the onus was on the government to clarify in the plea agreement that the appeal waiver nonetheless encompasses it. In other words, the government has not shown that the plea agreement “clearly and unambiguously” covers the appeal that Orellana brings.

Because Orellana did not object to the court’s remark about drug cartels, we review for plain error. *See O’Connor*, 567 F.3d at 397; *Lee*, 2026 WL 915461, at *2. The district court did not explain why it drew a connection between the proceeds of Orellana’s offense and Mexican drug cartels. The government for its part admits that “[n]o evidence was adduced directly supporting” the court’s remark. But to bridge the gap in the record it points to the court’s more than thirty years’ judicial experience and some supposed widely held assumption that Mexican drug cartels engage extensively in fraud and money laundering. We think the government’s attempt to rehabilitate the sentence is itself speculative and so fails to overcome the absence of evidence in the record. We therefore conclude that the court’s speculation in this regard amounted to plain error. *See United States v. Harrell*, 982 F.3d 1137, 1140 (8th Cir. 2020).

But to obtain relief, Orellana must also show that the court’s plain error affected his substantial rights. *See id.* In the sentencing context that means there must be “a reasonable probability that but for the error he would have received a more favorable sentence,” and when at sentencing a court relies on speculation or facts that aren’t in the record, we consider whether the court’s reliance on that speculation was a “principal basis” for the sentence. *See id.*

We conclude that Orellana has carried the day. During the sentencing hearing, the court mentioned Orellana’s connection to drug cartels twice, thus laying apparent emphasis on that alleged fact. The court first alluded to this connection in fixing the sentence. Then, after pronouncing the sentence, it said, “And among the factors considered by the Court is that these two people are dealing directly with people in Mexico who are involved in criminal activity, large scale. So they’re sending money to people engaged in all kinds of illegal activity.” All this indicates to us that the court had given particular importance to these facts in arriving at its sentence. That the court’s allusion to Orellana’s connection to drug cartels came at the very outset of its remarks after announcing the sentence is strong evidence that this was one of the court’s chief concerns, and thus a principal basis for the sentence. So this plain error affected Orellana’s substantial rights. And because this plain error also seriously affects the fairness, integrity, or public reputation of the judicial proceedings, *see United States v. Combs*, 44 F.4th 815, 818–19 (8th Cir. 2022) (per curiam), we think resentencing is in order.

With respect to Miranda, we dismiss his appeal in part and affirm his sentence. As for Orellana, we vacate his sentence and remand for resentencing.