

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-4419

UNITED STATES OF AMERICA

v.

RAULIN SANCHEZ-CORDERO,
Appellant

Appeal from the United States District Court
for the District of New Jersey
(D.C. Criminal No. 02-cr-00593)
District Judge: Honorable John C. Lifland

Submitted Under Third Circuit LAR 34.1(a)
November 18, 2003

Before: RENDELL, BARRY and CHERTOFF, Circuit Judges.

(Filed November 21, 2003)

OPINION OF THE COURT

RENDELL, Circuit Judge.

Raulin Sanchez-Cordero appeals from his sentence, contending that it was in excess of that given to his co-defendant, and affected his substantial rights. As a result, he contends his sentence should be vacated.

Sanchez-Cordero pled guilty to conspiring to distribute more than 50 grams of cocaine base and entered into a plea agreement whereby he stipulated that he waived his right to appeal and collaterally attack his sentence so long as the total offense level determined by the District Court was equal to or less than 27. In fact, the offense level determined by the District Court was 25. This resulted in a guideline range of 63-78 months. However, the statutory mandatory minimum for the crime to which Sanchez-Cordero pled was 120 months.

Sanchez-Cordero now contends that his sentence, which was the mandatory minimum, was nonetheless greater than the sentence given to his co-conspirator, Jose Chalas, and because Chalas was more culpable than Sanchez-Cordero, Sanchez-Cordero's rights have been violated.

We note that in his initial brief Sanchez-Cordero did not mention that he had waived his right to appeal, and he has not filed a reply brief challenging the government's contention that he should be deemed to have waived his right to appeal, as he so stipulated in his plea agreement. See United States v. Cianci, 154 F.3d 106, 110 (3d Cir. 1998); see also United States v. Melendez, 55 F.3d 130, 136 (3d Cir. 1995); United States v. Parker, 874 F.2d 174, 178 (3d Cir. 1989).

We have no basis on which to disturb the District Court's sentence in light of Sanchez-Cordero's own waiver. Even were we to hesitate to enforce the waiver because his sentence was based on the statutory minimum rather than being measured by the

applicable offense level, we nonetheless fail to find the basis argued by Sanchez-Cordero - namely the length of his co-defendant's sentence - at all persuasive. This argument is only relevant in situations where the sentencing court's actions are so arbitrary as to deny due process, which clearly was not the case here. See United States v. Hart, 273 F.3d 363, 379 (3d Cir. 2001). We will AFFIRM.

_____ TO THE CLERK OF COURT:

Please file the foregoing opinion.

_____/s/Marjorie O. Rendell, Circuit Judge

Dated: November 21, 2003