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Tenth Circuit Affirms Sentence for the Tiger King

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In 'United States v. Maldonado-Passage', the U.S. Court of Appeals for the Tenth Circuit upheld a 252-month sentence for Joseph “Tiger King” Maldonado-Passage based primarily on his conviction on two murder-for-hire schemes.

In *United States v. Maldonado-Passage*, — F.4th —, 2022 U.S. App. LEXIS 35541 (Dec. 23, 2022), the U.S. Court of Appeals for the Tenth Circuit upheld a 252-month sentence for Joseph “Tiger King” Maldonado-Passage based primarily on his conviction on two murder-for-hire schemes. The circuit court rejected two procedural and two substantive challenges to his new sentence imposed after a prior appeal and remand. In the process, the court ruled that his two schemes to murder one person constituted two separate offenses under 18 U.S.C. §1958(a), a federal statute that criminalizes the use of interstate travel or the facilities of interstate commerce in a murder-for-hire scheme.

Factual Background

Maldonado-Passage's two murder-for-hire counts arose out of a dispute with Carol Baskin, an activist who felt he was mistreating animals in his Oklahoma zoo. *Id.* at *3. Their rivalry was featured in the 2020 Netflix documentary *Tiger King: Murder, Mayhem, and Madness*. *Id.* With respect to his first count, in November 2017, he solicited a zoo employee, Alan Glover, to kill Baskin; provided him with a phone preloaded with pictures of her; and organized and paid him \$3,000 for his interstate travel to Florida to murder her. *Id.* at *4. Glover traveled from Oklahoma to Florida but didn't try to kill her. *Id.*

The second count pertained to his agreement with “Mark,” an undercover FBI agent, to kill Baskin. *Id.* After being introduced to Mark by a friend who was cooperating with the FBI, Maldonado-Passage had several phone conversations with Mark from December 2017 to March 2018, and ultimately, he offered to pay Mark \$10,000 in installments to kill Baskin. *Id.*

The Trial, First Appeal and Remand Proceedings

Before trial, Maldonado-Passage moved to dismiss one of his two §1958(a) counts for multiplicity, arguing that they covered the same criminal behavior and a single plot to kill a single individual. *Id.* The district court denied the motion, ruling that the single victim did not “alter the

alleged plots' individual natures.” Id. at *5. He was convicted and sentenced to 264 months, including two consecutive 108-month terms on the two murder-for-hire counts. Id.

Maldonado-Passage didn't appeal the ruling on his multiplicity argument. He did, however, appeal his convictions, and he also claimed the court erred in failing to group the two convictions in calculating his offense level under the U.S. Sentencing Guidelines. Id. (citing *United States v. Maldonado-Passage*, 4 F.4th 1097, 1103 (10th Cir. 2021) (*Maldonado-Passage I*). The Tenth Circuit affirmed the convictions but agreed that the lower court erred when it failed to group the convictions under the Guidelines, because the two schemes involved “substantially the same harm.” Id. (quoting *Maldonado-Passage I*, 4 F.4th at 1099, 1104).

On remand, Maldonado-Passage moved to reconsider the denial of his pretrial motion to dismiss one of the murder-for-hire counts due to multiplicity, arguing that the circuit court's grouping decision showed that the two convictions should be merged. Id. at *6. But the district court ruled that he had not established adequate grounds for reconsideration, and it limited the scope of resentencing to the grouping issue. Id. at *6-*7. After adopting its prior sentencing findings, the court resentenced him to 252 months, reducing his sentence for the §1958(a) convictions from 216 to 204 months (two consecutive 102-month sentences). Id. at *7.

The Circuit Court Rejects the Procedural Arguments

Addressing the procedural issues, the Tenth Circuit initially upheld the district court's exercise of discretion in denying reconsideration. Id. at *8. The grounds for reconsideration are limited: “changes in controlling law; new, previously unavailable evidence; and clear error or manifest injustice.” Id. The circuit court noted that in seeking reconsideration, Maldonado-Passage had reiterated the arguments in his pretrial motion to dismiss, and importantly, it ruled that the decision in the first appeal did not alter the analysis. Id. at *9. Therefore, there was no intervening change in the law warranting reconsideration. Id.

The circuit court next addressed the district court's decision not to expand its review on remand beyond the grouping decision. Resolution of this question involved application of the mandate rule, “which requires a trial court to conform with the appellate court's terms of remand.” Id. Under this rule, unless the appellate mandate expressly limits the district court's discretion, the lower court may determine what to hear on remand. Id. Here, Maldonado-Passage argued on remand that it would be unconstitutional to impose two separate, consecutive sentences for his actions. Id. at *10. The district court, however, appropriately treated the mandate as limiting its consideration to resentencing and allowing discretion as to the scope of resentencing. Id. at *11. And it properly exercised its discretion in declining to consider any resentencing issue other than correcting the grouping error. Id.

The Court Rejects the Substantive Arguments

The circuit court then turned to the two substantive issues. First, it ruled

that even if Maldonado-Passage had overcome the procedural hurdles, his multiplicity claim failed. *Id.* at *12. He contended that under §1958(a), which criminalizes the use of interstate travel or the facilities of interstate commerce in a murder-for-hire scheme, his counts couldn't be separated into two violations with separate sentences, because they constituted only one plot: to kill Baskin. *Id.* Thus, when one uses multiple means of interstate commerce in furtherance of one plot, there is only one §1958(a) violation. Decisions from the First and Sixth Circuits supported this “plot-centric” view of section 1958(a). See *United States v. Gordon*, 875 F.3d 26, 29, 33-38 (1st Cir. 2017) (defendant was charged with five counts of violating section 1985(a) via three phone calls and two letters to an undercover agent posing as a hitman; court ordered the five counts merged into one); *United States v. Wynn*, 987 F.2d 354, 359 (6th Cir. 1993) (separate phone calls relating to one murder plot constituted only one section 1958(a) violation).

The Tenth Circuit agreed with Maldonado-Passage and with the First and Sixth Circuits that section 1958(a) contemplates a plot-centric unit of prosecution. 2022 U.S. App. LEXIS 35541, at *15-17. But it disagreed that this changed the outcome. As the circuit court explained, in *Gordon and Wynn*, the courts addressed multiple interstate communications in furtherance of one plot. Here, by contrast, there were as many plots as hitmen. *Id.* at *17. Though the hitmen shared a common target, they didn't work together, were contacted separately at separate times, received different instructions, and were offered different rewards. *Id.* And unlike multiple phone calls to a single hitman, hiring separate hitmen increased the chance of harm to Baskin. *Id.* at *18. It was therefore appropriate to separately punish each separate scheme.

The circuit court also rejected Maldonado-Passage's second substantive argument, in which he claimed the district court's resentencing decision was unreasonable. It ruled that the lower court didn't miscalculate the sentencing range in the Guidelines, and because the sentence fell within the parameters of the advisory Guidelines' range, it was entitled to a presumption of reasonableness. *Id.* at *20-*21. The court concluded that Maldonado-Passage had failed to rebut the presumption. *Id.* at *21.

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