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USA v. Orozco

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NOT-PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-5070

UNITED STATES OF AMERICA

v.

OMAR OROZCO,

Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Criminal No. 98-cr-00077)
District Judge: Honorable Joseph E. Irenas

Submitted Under Third Circuit LAR 34.1(a)
January 16, 2002

Before: RENDELL, FUENTES and MAGILL*, Circuit Judges

(Filed: January 17, 2002)

MEMORANDUM OPINION

RENDELL, Circuit Judge.

*Honorable Frank J. Magill, United States Circuit Judge for the Eighth Circuit, sitting by designation.

Orozco appeals the District Court sentencing order, contending that the District Court abused its discretion in labeling him as a "leader or organizer," and erred in not granting a downward departure for his rehabilitative efforts.

The first issue, namely as to whether Orozco should have been classified as a "leader or organizer", was noted in Orozco's summary of his argument, but never discussed in his brief. Accordingly, this argument has been waived. See Linder &

Assoc., Inc. v. Aetna Casualty & Surety Co., 166 F.3d 547, 552, n. 5 (3rd Cir. 1999). See also Merkle v. Upper Dublin School Dist., 211 F.3d 782, 791 (3rd Cir. 2000).

With respect to Orozco's second argument, namely that a downward departure should have been granted based upon his rehabilitative efforts, we conclude that we lack jurisdiction to review this discretionary ruling on the part of the District Court. It is clear from the record that the District Court recognized that it had the authority to depart based upon Orozco's post offense rehabilitation, but that it concluded that the conduct was not so extraordinary as to take the case out of the "heartland" so as to justify a downward departure. Instead, the District Court exercised its discretion and imposed a sentence at the bottom of the applicable guideline range. Accordingly, we lack jurisdiction to review the District Court's discretionary refusal to depart in this case. See United States v. Price, 13 F.3d 711, 736 (3d Cir. 1994).

We will accordingly affirm the District Court's ruling.

TO THE CLERK OF COURT:

Please file the foregoing memorandum opinion.

/s/ Marjorie O. Rendell
Circuit Judge