

14-8913 MOLINA-MARTINEZ V. UNITED STATES

DECISION BELOW: 588 Fed.Appx. 333

LOWER COURT CASE NUMBER: 13-40324

QUESTION PRESENTED:

In *United States v. Olano*, 507 U.S. 725 (1993), the Court held that, in order to secure relief under plain-error review pursuant to Federal Rule of Criminal Procedure 52 (b), a defendant must show that the error affected his substantial rights, which "in most cases [] means that the error must have been prejudicial[, i.e.,] [i]t must have affected the outcome of the district court proceedings." *Id.* at 734 (citations omitted). The Court, however, declined to "decide whether the phrase 'affecting substantial rights' is always synonymous with 'prejudicial,'" *id.* at 735 (citations omitted); and the Court suggested that "[some] errors [] should be presumed prejudicial [even] if the defendant cannot make a specific showing of prejudice." *Id.*

Since that time, at least two circuits have, in connection with errors in the application of the United States Sentencing Guidelines, adopted the very sort of presumption suggested in *Olano*: that is, they presume an effect on substantial rights when an error results in the application of an erroneous Guideline range to a criminal defendant. See *United States v. Sabillon-Umana*, 772 F.3d 1328, 1333-34 (10th Cir. 2014); *United States v. Knight*, 266 F.3d 203, 207-10 (3d Cir. 2001). In this case, however, the Fifth Circuit rejected such a presumption as foreclosed by its prior decisions. See *United States v. Molina-Martinez*, 588 Fed. Appx. 333, 334 n.1 (5th Cir. 2014) (unpublished).

In light of the foregoing, the question presented is as follows:

Where an error in the application of the United States Sentencing Guidelines results in the application of the wrong Guideline range to a criminal defendant, should an appellate court presume, for purposes of plain-error review under Federal Rule of Criminal Procedure 52(b), that the error affected the defendant's substantial rights?

CERT. GRANTED 10/1/2015