

United States Court of Appeals For the First Circuit

No. 12-1974

UNITED STATES

Appellee

v.

DONNA GAEL CHILSON

Defendant - Appellant

Before

Lynch, Chief Judge,
Howard and Kayatta, Circuit Judges.

JUDGMENT

Entered: April 25, 2013

Defendant-appellant Donna Gael Chilson was sentenced to fifteen months imprisonment for her part in a marijuana conspiracy. On appeal, she argues that the imposition of a term of imprisonment on her was substantively unreasonable in light of the hardship incarceration will impose on her, as weighed against her culpability. The government has moved for summary disposition, invoking a waiver of appellate rights in the plea agreement triggered by the district court's acceptance of a drug-quantity stipulation. Chilson opposes the motion, urging that this court's decision in United States v. Prosperi, 686 F.3d 32 (1st Cir. 2012), subsequent to her plea agreement presents new law not subject to the appellate-waiver clause by its terms.

The *Prosperi* case is significant to this appeal, but not because it constrains a sentencing court to opt for a non-incarcerative sentence for a defendant situated like this appellant. *Prosperi* affirms the neutral legal principle of broad sentencing discretion under the advisory application of the United States Sentencing Guidelines now in force. In *Prosperi*, we affirmed the district court's sentencing choice despite the fact that it had "given us pause," 686 F.3d at 49. In this case, counsel diligently assembled a record in support of the defense's sentencing recommendation, complete with videotaped interviews of members of the defendant's community. There is room for a difference of

opinion on the advisability of a term of imprisonment in this case, but the sentencing court offered a plausible rationale for its decision. The marijuana ring was a large operation of long duration, and Chilson's participation was considerable. The district court was unwilling to discount the seriousness of the offense conduct and the interest of deterrence so steeply that no prison time resulted. In this, we cannot say that the district court's weighing was so imbalanced that it exceeded the broad discretion that undergirds its sentencing authority under the advisory guidelines, as confirmed by *Prosperi*.

The motion for summary disposition is **allowed** and the judgment is **affirmed**.

By the Court:

/s/ Margaret Carter, Clerk

cc: Joshua L. Gordon
Seth R. Aframe
Debra M. Walsh