IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
F I L E D
August 17, 2010
Lyle W. Cayce
Clerk

No. 09-50977
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE ANGEL RIVERA-HIDROGO,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:09-CR-1741-1

Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Jose Angel Rivera-Hidrogo (Rivera) was convicted of attempted illegal reentry and of false personation in immigration matters. Rivera contends in this appeal that the sentence imposed was unreasonable. This court reviews the reasonableness of a district court's sentencing decision for an abuse of discretion. *Gall v. United States*, 552 U.S. 38, 51 (2007). "[A] sentence within a properly calculated Guideline range is presumptively reasonable." *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Rivera argues that the district court abused its discretion in determining whether Rivera's guidelines range was greater than necessary by failing to consider the disparity between defendants who cannot avail themselves of a fast-track program and defendants in other districts who can avail themselves of such a program. The disparity between districts with fast-track programs and districts without them was intended by Congress and thus is not "unwarranted." *United States v. Gomez-Herrera*, 523 F.3d 554, 563 (5th Cir. 2008). Accordingly, defendants like Rivera who are sentenced in districts without fast-track programs are not entitled to sentence reductions based on the disparity. *See id.* Rivera recognizes that this issue is foreclosed by *Gomez-Herrera*; he raises the issue to preserve it for possible Supreme Court review. The judgment of the district court is AFFIRMED.