

No. __ - _____

IN THE SUPREME COURT OF THE UNITED STATES

EDGAR ORTEGA-LIMONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-11548
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
August 27, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EDGAR ORTEGA-LIMONES,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-135-1

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

Edgar Ortega-Limones was convicted of one count of illegal reentry into the United States and sentenced to serve an above-guidelines prison term of 60 months as well as a three-year term of supervised release. Now, he argues that his sentence is procedurally unreasonable because the district court did not explicitly address his argument for a below-guidelines sentence and did not adequately explain its choice to give an above-guidelines sentence. He further

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

argues that the sentence is substantively unreasonable because it was greater than needed to achieve the sentencing aims of 18 U.S.C. § 3553(a).

We review sentences for reasonableness in light of the sentencing factors of § 3553(a). *Gall v. United States*, 552 U.S. 38, 46, 49-50 (2007). Under the bifurcated review process of *Gall*, we first examine whether the district court committed procedural error. 552 U.S. at 51. When sentencing, a judge should give enough reasons to show “that he has considered the parties’ arguments and has a reasoned basis for exercising his own legal decisionmaking authority.” *Rita v. United States*, 551 U.S. 338, 356 (2007).

If the sentence is procedurally reasonable, we then review it for substantive reasonableness in light of the § 3553(a) factors. *Gall*, 552 U.S. at 51. In reviewing a non-guidelines sentence for substantive reasonableness, we “consider the totality of the circumstances, including the extent of any variance from the Guidelines range.” *United States v. Brantley*, 537 F.3d 347, 349 (5th Cir. 2008) (internal quotation marks and citation omitted). A sentence is substantively unreasonable if it ignores a factor that should have been given considerable weight, gives considerable weight to an improper factor, or is the result of “a clear error of judgment in balancing the sentencing factors.” *United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013) (internal quotation and citations omitted). The defendant’s disagreement with the sentence selected by the district court does not warrant reversal. *United States v. Ruiz*, 621 F.3d 390, 398 (5th Cir. 2010); *see Gall*, 552 U.S. at 51.

The record shows that the district court gave due consideration to the § 3553(a) factors, including those emphasized by Ortega-Limones, before imposing sentence. Although it did not explicitly reject his arguments in favor of a below-guidelines sentence, it was not required to do so. *See Rita*, 551 U.S. at 359. Additionally, the district court’s reasons show that it properly

grounded its choice of sentence in Ortega-Limones's history as well as the need for deterrence and protection of the public. Ortega-Limones has not shown that his sentence is procedurally unreasonable. *See Rita*, 551 U.S. at 359, 356; *Fraga*, 704 F.3d at 439.

He likewise has not shown that his sentence is substantively unreasonable. The record reveals no error in connection with the district court's consideration of sentencing factors. *See Chandler*, 732 F.3d at 437. Rather, the record shows that the district court considered the § 3553(a) factors and concluded that they counseled in favor of an above-guidelines sentence. Additionally, the sentence is similar to others this court has affirmed. *See Brantley*, 537 F.3d at 349-50; *United States v. Lopez-Velasquez*, 526 F.3d 804, 807 (5th Cir. 2008); *United States v. Smith*, 440 F.3d 704, 708-10 (5th Cir. 2006). Ortega-Limones's arguments show no more than a disagreement with the district court's weighing of the § 3553(a) factors, which is not enough to show error. *See Ruiz*, 621 F.3d 390, 398. Finally, his challenge to 8 U.S.C. § 1326(b), which is grounded in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

v.

EDGAR ORTEGA-LIMONES

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:18-CR-00135-O(01)

U.S. Marshal's No.: 49999-279

Shawn Smith for Alex C. Lewis, Assistant U.S.

Attorney

William Hermesmeyer, Attorney for the Defendant

On August 15, 2018 the defendant, EDGAR ORTEGA-LIMONES, entered a plea of guilty as to Count One of the Indictment filed on June 20, 2018. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326(a) and (b)(1)	Illegal Reentry After Deportation	June 18, 2017	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on June 20, 2018.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed November 19, 2018.


REED O'CONNOR
U.S. DISTRICT JUDGE

Signed November 20, 2018.

Judgment in a Criminal Case

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Defendant: EDGAR ORTEGA-LIMONES

Case Number: 4:18-CR-00135-O(1)

IMPRISONMENT

The defendant, EDGAR ORTEGA-LIMONES, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **SIXTY (60) months** as to Count One of the Indictment filed on June 20, 2018.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) years** as to Count One of the Indictment filed on June 20, 2018.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

Judgment in a Criminal Case

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Defendant: EDGAR ORTEGA-LIMONES

Case Number: 4:18-CR-00135-O(1)

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, ammunition, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

take notice that, as a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States;

take notice that, in the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions recommended by the U.S. Sentencing Commission and shall:

report in person to the U.S. Probation Office in the district to which the defendant is released from custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry; and,

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case

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Defendant: EDGAR ORTEGA-LIMONES

Case Number: 4:18-CR-00135-O(1)

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY
Deputy Marshal