

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAIME ERNESTO COCA-ORTIZ,
Also known as, Jaime Ernesto Coca-Marchante,

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

United States Court of Appeals
Fifth Circuit

FILED

April 13, 2020

Lyle W. Cayce
Clerk

No. 19-10510
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAIME ERNESTO COCA-ORTIZ, also known as Jaime Ernesto Coca-Marchante,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-253-1

Before OWEN, Chief Judge, and SOUTHWICK and WILLETT, Circuit Judges.
PER CURIAM:*

Jaime Ernesto Coca-Ortiz appeals the sentence imposed for his conviction of illegal reentry into the United States. The district court imposed an above-guidelines sentence of 60 months of imprisonment and two years of supervised release. Coca-Ortiz raises three claims of error.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

First, he contends that the district court committed procedural error by failing to address his arguments for a lesser sentence and failing to adequately explain its reasons for the upward variance. In the district court, Coca-Ortiz did not object to his sentence based on procedural error. He acknowledges that our precedent requires a specific objection to preserve procedural sentencing errors, but he argues that no such objection was necessary to preserve the procedural errors he raises here. In accordance with our precedent, plain error review applies to Coca-Ortiz's claims of procedural error. *See United States v. Whitelaw*, 580 F.3d 256, 259 (5th Cir. 2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 361-62 (5th Cir. 2009).

Before pronouncing its sentencing decision, the district court heard Coca-Ortiz's arguments in mitigation relating to his family, criminal history, reasons for coming to the United States, and plans for the future. However, the district court indicated that the 60-month sentence was appropriate based on other considerations under 18 U.S.C. § 3553(a), including Coca-Ortiz's history of repeated immigration violations and the need to protect the public from further crimes by him, to provide just punishment, and to afford adequate deterrence. *See* § 3553(a)(1), (a)(2)(A)-(C). Coca-Ortiz has not shown that the district court plainly erred with respect to the consideration of his mitigation arguments and the explanation of the sentence. *See United States v. Kippers*, 685 F.3d 491, 498 (5th Cir. 2012).

In his second claim of error, Coca-Ortiz challenges the substantive reasonableness of his sentence. Coca-Ortiz's advocacy at sentencing for a below-guidelines sentence of 20 months of imprisonment was sufficient to preserve this issue for appeal. *See Holguin-Hernandez v. United States*, No. 18-7739, 2020 WL 908880, at *3-4 (U.S. Feb. 26, 2020).

The 60-month prison term that was imposed constituted an upward variance of 23 months from the top of Coca-Ortiz's guidelines range. The district court's reasons for the upward variance included Coca-Ortiz's criminal history and history of repeatedly returning to the United States illegally after being removed, and those reasons are supported by the record. “[O]ur review for substantive reasonableness is highly deferential, because the sentencing court is in a better position to find facts and judge their import under the § 3553(a) factors with respect to a particular defendant.” *United States v. Diehl*, 775 F.3d 714, 724 (5th Cir. 2015) (internal quotation marks and citation omitted). Giving due deference to the district court's sentencing decision, we conclude that Coca-Ortiz has not shown that the district court abused its discretion with respect to the substantive reasonableness of the sentence.

Lastly, Coca-Ortiz argues that the statutory sentencing enhancements under 8 U.S.C. § 1326(b) are unconstitutional and that his guilty plea was involuntary because he was not advised that the prior-felony provision of § 1326(b)(1) stated an essential element of his offense. As he correctly concedes, these arguments are foreclosed in this court 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

JUDGMENT IN A CRIMINAL CASE

v.

JAIME ERNESTO COCA-ORTIZ

Case Number: 4:18-CR-00253-O(01)

U.S. Marshal's No.: 97571-280

Laura Montes, Assistant U.S. Attorney

Erin Elizabeth Kelley, Attorney for the Defendant

On December 26, 2018 the defendant, JAIME ERNESTO COCA-ORTIZ, entered a plea of guilty as to Count One of the Indictment filed on October 10, 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	8/29/2018	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 October 10, 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 April 22, 2019.


REED O'CONNOR
U.S. DISTRICT JUDGE

Signed April 23, 2019.

Judgment in a Criminal Case

Defendant: JAIME ERNESTO COCA-ORTIZ

Case Number: 4:18-CR-00253-O(1)

IMPRISONMENT

The defendant, JAIME ERNESTO COCA-ORTIZ, 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 October 10, 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 **Two (2) years** as to Count One of the Indictment filed on October 10, 2018.

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 USC § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

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 contained in the Judgment and shall comply with the mandatory and special conditions stated herein:

- (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;

Judgment in a Criminal Case

Defendant: JAIME ERNESTO COCA-ORTIZ

Case Number: 4:18-CR-00253-O(1)

- (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.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

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

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

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: JAIME ERNESTO COCA-ORTIZ

Case Number: 4:18-CR-00253-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