

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 23, 2022

Lyle W. Cayce
Clerk

No. 21-51152
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JESUS JAVIER CRUZ-HERNANDEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-504-1

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Jesus Javier Cruz-Hernandez pleaded guilty to conspiracy to transport illegal aliens and now appeals the 46-month sentence imposed. He argues that the sentence is substantively unreasonable because it is greater than necessary to achieve the sentencing goals of 18 U.S.C. § 3553(a). Specifically,

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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he argues that the district court should have given more consideration to the severity of the increase to his base offense level, his lack of a criminal history, his marital and substance abuse problems, and his employment history.

We consider the substantive reasonableness of a sentence imposed under an abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). Furthermore, we presume that a within-guidelines sentence is reasonable. *United States v. Jenkins*, 712 F.3d 209, 214 (5th Cir. 2013). The district court considered Cruz-Hernandez's mitigation arguments, the record, and the § 3553(a) factors before determining that a sentence at the top of the guidelines range was fair and reasonable. Cruz-Hernandez fails to rebut the presumption of reasonableness attached to his sentence by showing that the district court failed to consider a pertinent factor, considered an irrelevant or improper factor, or erred in balancing the sentencing factors. *See Jenkins*, 712 F.3d at 214.

The judgment of the district court is AFFIRMED.