

705 Fed.Appx. 317 (Mem)

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 5th Cir. Rules 28.7 and 47.5. United States Court of Appeals, Fifth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.

Adan HERNANDEZ-NUNEZ, Defendant-Appellant.

No. 17-40118

|
Summary Calendar

|
Filed December 5, 2017

Appeal from the United States District Court for the Southern District of Texas No. 7:16-CR-1194-1

Attorneys and Law Firms

Jeffrey Scott Miller, Esq., Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of Texas, Corpus Christi, TX, Carmen Castillo Mitchell, Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of Texas, Houston, TX, for Plaintiff-Appellee

Marjorie A. Meyers, Federal Public Defender, John Moreno Parras, Kathryn Shephard, Federal Public Defender's Office, Southern District of Texas, Houston, TX, for Defendant-Appellant

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

Footnotes

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Opinion

PER CURIAM: *

Adan Hernandez-Nunez pleaded guilty of harboring an alien for financial gain, and he received an above-guidelines sentence of fifty months in prison and three years' supervised release. He contends that his sentence is substantively unreasonable because the district court's decision that an above-guidelines sentence was warranted was grounded in conduct that was already factored into the guidelines calculations.

If the district court has imposed a sentence that deviates from the guidelines range, this court evaluates whether the sentence “unreasonably fails to reflect the statutory sentencing factors” set forth in 18 U.S.C. § 3553(a). *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006). “A non-Guideline sentence unreasonably fails to reflect the statutory sentencing factors where it (1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *Id.*

The district court gave due consideration to the § 3553(a) factors and committed no error when balancing them. *See id.* Hernandez-Nunez's theory that the court should have balanced the § 3553(a) factors differently “is not a sufficient ground for reversal.” *See United States v. Malone*, 828 F.3d 331, 342 (5th Cir.), *cert. denied*, — U.S. —, 137 S.Ct. 526, 196 L.Ed.2d 408 (2016).

AFFIRMED.

All Citations

705 Fed.Appx. 317 (Mem)