

August 13, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-41277  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERTO VILLARREAL-GUERRERO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:06-CR-453-ALL  
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Before JOLLY, DENNIS, and CLEMENT, Circuit Judges

PER CURIAM:\*

Roberto Villarreal-Guerrero (Villarreal) appeals the sentence imposed following his guilty plea to illegal reentry following deportation. Although Villarreal concedes that his sentence is to be reviewed for reasonableness under this court's precedent, he argues that a presumption of reasonableness standard is unconstitutional. This court is bound by the Supreme Court's recent decision in Rita v. United States, - U.S. -, 127 S.Ct. 2456 (June 21, 2007) holding that we may apply a presumption of reasonableness to a district court sentence that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

falls within a properly calculated Sentencing Guidelines range. Id. at 2463.

Villarreal also argues that his sentence of 46 months of imprisonment, which was within the applicable advisory sentencing guideline range, is unreasonable under 18 U.S.C. § 3553(a) because the district court failed to consider mitigating factors. It is clear from the record that the district court considered the mitigating evidence offered by Villarreal at sentencing. Villarreal has not shown that his sentence was unreasonable or that this court should not defer to the district court's determinations at sentencing. See United States v. Mares, 402 F.3d 511, 519 (5th Cir. 2005).

Accordingly, the judgment of the district court is AFFIRMED.