

May 20, 2004

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 03-20662
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FERNANDO GARZA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(H-03-CR-0002-1)

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Fernando Garza appeals his sentence for harboring illegal aliens and aiding and abetting in violation of 8 U.S.C. §§ 1324(A)(1)(a)(III), 1324(A)(1)(b)(I), 1324(A)(1)(a)(V)(ii), and 18 U.S.C. § 2. Garza asserts that the district court erred in enhancing his offense level pursuant to Sentencing Guidelines §§ 2L1.1(b)(5) (creating substantial risk of death on serious bodily injury) and 3C1.1 (obstruction of justice).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

This court reviews the application of the Guidelines *de novo* and reviews the factual findings by the district court for clear error. ***United States v. Garcia-Guerrero***, 313 F.3d 892, 895 (5th Cir. 2002). A sentence will be upheld, "unless it was imposed in violation of law or as a result of an incorrect application of the sentencing guidelines or it is outside the range of the applicable guideline and is unreasonable". ***Id.***

The district court did not clearly err in enhancing Garza's offense level pursuant to U.S.S.G. §§ 2L1.1(b)(5) and 3C1.1. See ***United States v. Cuyler***, 298 F.3d 387, 388 (5th Cir. 2002); ***United States v. O'Callaghan***, 106 F.3d 1221, 1223 (5th Cir. 1997).

AFFIRMED