

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40578
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE GUADALUPE RAMIREZ-NUNEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:03-CR-958-ALL

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Jose Guadalupe Ramirez-Nunez appeals the sentence imposed following his guilty-plea conviction of violating 8 U.S.C. § 1326(a) and (b) by being found in the United States, without permission, following both his conviction of an aggravated felony and subsequent deportation. He seeks to challenge the district court's denial of his motion for a downward departure.

The record reflects that Ramirez-Nunez knowingly and voluntarily waived his "right to appeal any sentence imposed within the guidelines range." Specifically, Ramirez-Nunez waived

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

"the right to appeal the sentence imposed or the manner in which it was determined" unless the sentence was "imposed above the statutory maximum" or constituted "an upward departure from the Sentencing Guidelines" The exceptions to Ramirez-Nunez's waiver-of-appeal provision do not permit an appeal in this case.

As Ramirez-Nunez's appeal waiver clearly precludes this appeal, and as Ramirez-Nunez has not raised any argument that the waiver-of-appeal provision is invalid or otherwise inapplicable, we DISMISS the appeal as frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

Larry Warner, Ramirez-Nunez's attorney on appeal, is warned that pursuing frivolous appeals will invite sanctions. See United States v. Gaitan, 171 F.3d 222, 224 (5th Cir. 1999).

APPEAL DISMISSED; SANCTION WARNING ISSUED.