

September 28, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-30782
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LINDA G. HIMEL,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:03-CR-20046-1

Before REAVLEY, WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

Linda G. Himel appeals the 24-month sentence imposed following her guilty-plea conviction of harboring illegal aliens. Himel argues for the first time on appeal that the district court erred by not awarding her an additional one-level reduction for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(b). A review of the record shows that the prerequisites for a § 3E1.1(b) reduction were not satisfied in this case. See § 3E1.1(b). Accordingly, the district court did not plainly err

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

by refusing to award the reduction. See United States v. Medina-Anicacio, 325 F.3d 638, 647 (5th Cir. 2003).

Himel also argues that the district court based its sentence on an improper factual finding and that the sentence imposed was unreasonable. Himel's argument regarding the erroneous factual finding is without merit. The record reflects that the district court acknowledged and corrected its interpretation of Himel's testimony. The record further reflects that the initial, erroneous finding was not a factor in the district court's decision to sentence Himel outside of the guideline range.

The district court followed the proper procedure for imposing a non-guideline sentence. See United States v. Smith, 440 F.3d 704, 707-09 (5th Cir. 2006). Additionally, the district court's upward deviation was supported by proper 18 U.S.C. § 3553(a) factors. Id. at 710. Himel has not shown that the six-month deviation from the advisory guideline range was unreasonable. Id. Accordingly, the judgment is AFFIRMED.