

July 7, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40333
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ADRIAN ISMAEL GARZA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CR-582-1

Before JOLLY, DAVIS and OWEN, Circuit Judges.

PER CURIAM:*

Adrian Ismael Garza, without benefit of a plea agreement, pleaded guilty to possession with intent to distribute more than 100 kilograms of marijuana. Garza was sentenced to 69 months in prison, five years of supervised release, a \$500 fine, and a \$100 special assessment. The district court arrived at Garza's sentence by upwardly departing from a guideline range of imprisonment of 60 to 63 months. Garza did not object to the departure in the district court.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 district court concluded that an upward departure was necessary to protect the public from further crimes. The district court considered the characteristics of the defendant, the need to promote respect for the law, and the need to afford an adequate deterrence to criminal conduct in light of Garza's lack of respect for the rights of others. The district court based its determination that an upward departure was warranted on the Sentencing Guidelines and the factors of 18 U.S.C. § 3553.

After reviewing the record, we conclude that the district court could reasonably have imposed the sentence it selected based on the record before it. See United States v. Jones, 444 F.3d 430, 439 (5th Cir.), *cert. denied*, ___ S. Ct. ___ (U.S. June 26, 2006). Neither the decision to depart nor the extent of the departure were unreasonable under plain error review. See id. at 439-43.

The judgment of the district court is AFFIRMED.