

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

September 10, 2008

Charles R. Fulbruge III
Clerk

No. 07-30925
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MARION CATALANO

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:06-CR-60079-1

Before HIGGINBOTHAM, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:*

Marion Catalano appeals his sentence following his guilty plea conviction for possession of child pornography. He argues that, in light of *Gall v. United States*, 128 S. Ct. 586 (2007), the district court committed procedural error in sentencing him when it refused to consider important factors under 18 U.S.C. § 3553(a) regarding his health and need for psychological treatment. He argues that the district court relied on case law of this court that likely has not survived

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gall and that such case law had a “chilling effect” on the district court concerning the appropriate weight to give to his mitigating circumstances.

A review of the record indicates that the district court did not refuse to consider Catalano’s health conditions in sentencing him. Immediately before and after pronouncing Catalano’s sentence, the district court explicitly stated that it took into account his health issues. There is no indication in the record of any chilling effect concerning the weight accorded Catalano’s mitigating circumstances.

Accordingly, the judgment of the district court is AFFIRMED.