

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 1, 2009

Charles R. Fulbruge III
Clerk

No. 08-20275
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ALFREDO ARZATE-DAVALOS

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:07-CR-476-2

Before DAVIS, GARZA and PRADO, Circuit Judges.

PER CURIAM:*

Alfredo Arzate-Davalos (Arzate) pleaded guilty to conspiracy to harbor illegal aliens. He was sentenced to 33 months of imprisonment, the lowest possible term under the applicable guidelines sentencing range.

Arzate appeals his conviction but makes no argument with regard to his sentence. Arzate seeks to have his plea set aside, asserting that it was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

unknowing and, thus, involuntary due to the district court's failure to comply with the requirements of FED. R. CRIM. P. 11 during his arraignment.

When, as here, a defendant does not object to Rule 11 errors in the district court, plain error review applies. *See United States v. Vonn*, 535 U.S. 55, 59 (2002). To show plain error, the appellant must show an error that is clear or obvious and that affects his substantial rights. *United States v. Baker*, 538 F.3d 324, 332 (5th Cir. 2008), *cert. denied*, 129 S. Ct. 962 (2009). If the appellant makes such a showing, this court has the discretion to correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.* Arzate has failed to show that, but for the asserted Rule 11 errors, he would not have pleaded guilty. *See United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004). Nor has he shown that, taken together, the district court's omissions had a cumulative effect sufficient to undermine confidence in the outcome of the proceeding. *See id.* Accordingly, he has failed to show that his plea was unknowing and involuntary. *Id.*

AFFIRMED.