

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

United States Court of Appeals
Fifth Circuit

FILED

March 18, 2009

Charles R. Fulbruge III
Clerk

No. 08-20809
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOSE LUIS ZAVALA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-326-6

Before DAVIS, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Jose Luis Zavala appeals the district court's order denying his motion to revoke his pretrial detention order. Zavala has been in custody since his 2004 arrest. In 2008, we reversed Zavala's jury convictions of two counts of conspiracy to possess with intent to distribute and two counts of possession with intent to distribute five or more kilograms of cocaine. Zavala contends that he is not a flight risk and that his continued detention violates his rights under the Eighth Amendment, the Speedy Trial Act, the Bail Reform Act, and the Due Process Clause.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 determined that Zavala did not rebut the 18 U.S.C. § 3142 presumption that no condition or combination of conditions would reasonably ensure Zavala's appearance or the safety of the community if Zavala were released. 18 U.S.C. § 3142 (e) & (f). Absent an error of law, we will uphold a district court's pretrial detention order if it is supported by the proceedings below. *United States v. Rueben*, 974 F.2d 580, 585 (5th Cir. 1992); *United States v. Hare*, 873 F.2d 796, 798 (5th Cir. 1989).

Zavala has not shown that he rebutted the presumption that he is a flight risk and that his release would present a danger to the community. *See* § 3142. Zavala did not raise his constitutional arguments in the district court. Further, he has abandoned any argument related to the Speedy Trial Act by failing to brief it adequately. *See United States v. Stevens*, 487 F.3d 232, 242 n.1 (5th Cir), *cert. denied*, 128 S. Ct. 336 (2007). His Eighth Amendment argument is foreclosed. *See Hare*, 873 F.2d at 800. The lack of consideration of Zavala's due process claim will not result in a manifest miscarriage of justice as Zavala had ample opportunity to present the argument to the district court. *See United States v. Barrett*, 837 F.2d 1341, 1344 n.2 (5th Cir. 1988) (declining to consider due process argument raised for the first time).

The district court's decision is supported by the proceedings below. *See Rueben*, 974 F.2d at 586. The pretrial detention order is AFFIRMED.