

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

United States Court of Appeals
Fifth Circuit

FILED

March 16, 2011

Lyle W. Cayce
Clerk

No. 10-10188
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GABRIEL HERNANDEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:09-CR-115-16

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Gabriel Hernandez appeals the 78-month sentence imposed after he pleaded guilty to possession with intent to distribute methamphetamine. We affirm.

Hernandez first contends that his offense level was improperly increased for the possession of a firearm by a coconspirator. We review only for plain error because Hernandez did not object to the increase in the district court. *See Puckett v. United States*, 129 S. Ct. 1423, 1428 (2009). The uncontested facts

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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recounted in the presentence report established that a coconspirator showed a firearm to Hernandez and his wife while they were in the conspirator's apartment buying methamphetamine for resale. Accordingly, the district court did not commit any error by concluding that another person involved in the offense possessed a firearm and that Hernandez knew of that possession or reasonably should have foreseen it. *See United States v. Cisneros-Gutierrez*, 517 F.3d 751, 765 (5th Cir. 2008).

Hernandez also contends that his sentence was unreasonable because it should have been more like his wife's sentence for her role in the same crime. He argues that the district court should have weighed his wife's extensive cooperation in his favor. He fails to show any error, plain or otherwise, in the sentence, and he fails to rebut the presumption that the sentence within the properly calculated guidelines range was reasonable. *See United States v. Ruiz*, 621 F.3d 390, 398 (5th Cir. 2010); *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006).

The district court's judgment is AFFIRMED.