

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

United States Court of Appeals
Fifth Circuit

FILED

June 28, 2011

Lyle W. Cayce
Clerk

No. 10-10729
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SCOTT MARC FINKELSTEIN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:10-CR-28-1

Before JOLLY, GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Scott Marc Finkelstein appeals as substantively unreasonable the sentence of imprisonment imposed following his guilty plea conviction of one count of unauthorized use of a means of identification. The district court rejected Finkelstein's request for probation and imposed an 18-month term of imprisonment, which was at the top of the advisory guideline range. We review the substantive reasonableness of the sentence for an abuse of discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Finkelstein notes that he committed the offense due to the need to provide for his family during a period of financial hardship. He contends that the sentence of imprisonment further harms the affected financial institutions because they must wait additional time to begin receiving restitution and because he will not have the financial security to make restitution payments once he is released from prison. He also asserts that the sentence of imprisonment imposes an unnecessary hardship on his family.

The district court heard similar arguments but determined that a sentence of 18 months of imprisonment was appropriate considering the sentencing factors of 18 U.S.C. § 3553(a). Essentially, Finkelstein now argues that this court should engage in impermissible “substantive second-guessing of the sentencing court.” *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 767 (5th Cir. 2008). Finkelstein has failed to overcome the presumption of reasonableness afforded his sentence. *See United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006).

AFFIRMED.