

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

United States Court of Appeals
Fifth Circuit

FILED

May 13, 2011

Lyle W. Cayce
Clerk

No. 10-10845
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SALVADOR NUNEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:10-CR-50-4

Before KING, BENAVIDES, and ELROD, Circuit Judges.

PER CURIAM:*

Salvador Nunez pleaded guilty to conspiracy to possess with intent to distribute a controlled substance, and he was sentenced within the advisory guidelines range to 262 months of imprisonment and five years of supervised release.

Nunez argues that the nature and circumstances of the offense do not support his sentence because (1) neither he nor anyone else in the conspiracy harmed anyone during the commission of the offense; (2) he was not an organizer

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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or leader of the conspiracy; and (3) he “possessed a relatively small amount of methamphetamine.” He further contends that his history and characteristics do not support his sentence because he was only 23 years old at the time of his conviction, had been abused by his father, and was planning to get married in May 2010. Additionally, he asserts that the district court was entitled to sentence Nunez anywhere within the statutory range of imprisonment.

The Government moves for summary affirmance on the ground that circuit precedent forecloses Nunez’s argument and, alternatively, requests an extension of time to file a responsive brief. Nunez has filed an unopposed motion for leave to file an out-of-time response to the Government’s motion.

Nunez has not shown that his sentence did not account for a factor that should have received significant weight, gave significant weight to an irrelevant or improper factor, or represented a clear error of judgment in balancing sentencing factors; his arguments merely reflect his disagreement with the propriety of his sentence and the weighing of factors that were properly considered. *See United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009), *cert. denied*, 130 S. Ct. 1930 (2010). As a result, he has failed to overcome the presumption of reasonableness that attaches to his within-the-guidelines sentence on appellate review. *See United States v. Campos-Maldonado*, 531 F.3d 337, 338 (5th Cir. 2008). Accordingly, Nunez has not demonstrated that the district court abused its discretion by imposing a substantively unreasonable within-guidelines sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED; MOTIONS FOR SUMMARY AFFIRMANCE AND FOR LEAVE TO FILE OUT-OF-TIME RESPONSE GRANTED; MOTION FOR EXTENSION OF TIME DENIED.