

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

United States Court of Appeals
Fifth Circuit

FILED

September 29, 2011

No. 11-40195 c/w
No. 11-40199
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PABLO DAVILA,

Defendant-Appellant

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 2:10-CR-945-1
USDC No. 2:10-CR-943-1

Before KING, JOLLY, and GRAVES, Circuit Judges.

PER CURIAM:*

In this consolidated appeal, Pablo Davila appeals his sentences for two counts of conspiracy to transport an unlawful alien within the United States in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), (a)(1)(A)(v)(I), and (a)(1)(B)(i). He was sentenced to 46 months for each offense with 12 months of the sentence in S.D. Tex. 2:10-CR-945 (5th Cir. 11-40195) to run consecutively to the sentence in S.D.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 11-40195 c/w
11-40199

Tex. 2:10-CR-943 (5th Cir. 11-40199) for a total sentence of 58 months of imprisonment and three years of supervised release for each offense. He contends that the district court's reasons for departing were inadequate and the departure was unreasonable.

Davila's arguments pertain only to the sentence imposed in S.D. Tex. 2:10-CR-945 (5th Cir. 11-40195). That sentence was an upward variance from the Guidelines and not an upward departure within the framework of the Guidelines. *See* U.S.S.G. § 5G1.2(c), comment. (n.1(B)); *United States v. Jacobs*, 635 F.3d 778, 782 (5th Cir. 2011). Davila has failed to show any error, plain or otherwise, in the adequacy of the district court's reasons for varying from the Guidelines or the substantive reasonableness of the sentence. *See United States v. Lopez-Velasquez*, 526 F.3d 804, 806-07 (5th Cir. 2008); *United States v. Smith*, 440 F.3d 704, 708-10 (5th Cir. 2006).

The judgments of the district court are **AFFIRMED**.