IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
August 23, 2013
Lyle W. Cayce
Clerk

No. 12-41319
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

REYNALDO VEGA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:11-CR-1446-1

Before KING, DAVIS, and ELROD, Circuit Judges.

PER CURIAM:[*]

Reynaldo Vega appeals the 210-month within-guidelines sentence imposed following his guilty plea conviction for receiving child pornography. Vega first argues that the district court erred in its resolution of his motion for a downward departure. We, however, lack jurisdiction to review the district court's refusal to depart downwardly. *See United States v. Sam*, 467 F.3d 857, 861 (5th Cir. 2006).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Next, Vega contends that his sentence is substantively unreasonable because he was only a "passive participant" in viewing child pornography on a personal computer and because the need to avoid unwarranted sentence disparities among similarly situated defendants, as mandated by 18 U.S.C. § 3553(a)(6), supports a below-guidelines sentence. The district court was aware of these allegedly mitigating circumstances but concluded that a sentence of 210 months was appropriate based on all of the § 3553(a) sentencing factors. Further, Vega has failed to show that any sentencing disparity was unwarranted given that he provides no information regarding the records of other defendants and given the district court's particular emphasis on his "heavy" use of the file sharing network and the number of images he downloaded. *See United States v. Smith*, 440 F.3d 704, 709 (5th Cir. 2006). Vega thus fails to rebut the presumption of reasonableness accorded his within-guidelines sentence. *See United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009). Accordingly, he has not shown error, plain or otherwise, and his "disagreement with the propriety of the sentence imposed does not suffice to rebut the presumption of reasonableness that attaches to [his] sentence." *United States v. Ruiz*, 621 F.3d 390, 398 (5th Cir. 2010).

The judgment of the district court is AFFIRMED.