

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

No. 13-20737
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 16, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS FRANCISCO VALENCIA-CARDENAS, also known as Luis Francisco Valencia, also known as Luis Francisco Valencia Cardenas,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:13-CR-181-1

Before STEWART, Chief Judge, and ELROD and HIGGINSON, Circuit Judges.

PER CURIAM:*

Luis Valencia-Cardenas appeals the within-guidelines sentence imposed following his guilty plea conviction for illegal reentry after deportation in violation of 8 U.S.C. § 1326. He argues that his 33-month sentence is substantively unreasonable because the district court failed to take account of

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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his cultural assimilation and the fact that his criminal history category of VI overrepresented his criminal history. In connection with that argument, he states the requirements for a downward departure for cultural assimilation pursuant to Application Note 8 to U.S.S.G. § 2L1.2.

To the extent that Valencia-Cardenas contends that the district court erred in denying him a downward departure under Application Note 8 to U.S.S.G. § 2L1.2 based upon cultural assimilation, we lack jurisdiction to review his claim. *See United States v. Hernandez*, 457 F.3d 416, 424 (5th Cir. 2006). Moreover, Valencia-Cardenas's arguments regarding his cultural assimilation and criminal history are insufficient to rebut the presumption of reasonableness given to his within-guidelines sentence. *See United States v. Gomez-Herrera*, 523 F.3d 554, 565-66 (5th Cir. 2008); *United States v. Rodriguez*, 523 F.3d 519, 526 (5th Cir. 2008). Therefore, Valencia-Cardenas has failed to show that his sentence is substantively unreasonable. His sentence is AFFIRMED.