

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

United States Court of Appeals
Fifth Circuit

FILED

November 18, 2013

Lyle W. Cayce
Clerk

No. 13-40279
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS RUEDA-CASTANEDA, also known as Jose Luis Rueda
Castaneda,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:12-CR-689-1

Before REAVLEY, JONES, and PRADO, Circuit Judges.

PER CURIAM:*

Jose Luis Rueda-Castaneda (Rueda) appeals his within-Guidelines 46-month sentence imposed following his guilty plea conviction for attempted illegal reentry. Rueda contends that the district court misapplied U.S.S.G. § 3E1.1(b) by allowing the Government to decline to move for the additional one-level reduction for acceptance of responsibility based on his

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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refusal to waive his right to appeal and that the district court should have awarded the additional acceptance point in consideration of Rueda's acceptance of responsibility.

Rueda's arguments are foreclosed by *United States v. Newson*, 515 F.3d 374, 376-79 (5th Cir. 2008), which held that a district court may not award a reduction pursuant to § 3E1.1(b) absent a motion from the Government and that "[a] defendant's refusal to waive his right to appeal is a proper basis for the Government to decline to make such a motion." The district court committed no error under the Sentencing Guidelines in effect at the time of sentencing. *See United States v. Davis*, 478 F.3d 266, 270 (5th Cir. 2007) (stating that construction of the guidelines is a question of law that is reviewed de novo).

AFFIRMED.