

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

No. 13-40725
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 3, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EDWIN IDONIS MARTINEZ-LOPEZ, also known as Edwin Idonis Manueles-Valledares,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:13-CR-12-1

Before DeMOSS, OWEN, and GRAVES, Circuit Judges.

PER CURIAM:*

Edwin Idonis Martinez-Lopez appeals his guilty plea conviction for being an alien unlawfully found in the United States after deportation. He argues for the first time on appeal that counsel was ineffective at sentencing. Although Martinez-Lopez's plea agreement contained an appeal waiver provision, we are unable to determine whether he knowingly and voluntarily

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 13-40725

waived his appellate rights because the record on appeal does not contain the rearraignment transcript. We pretermitt consideration of the effect of the appeal waiver in this case because we would not reach the merits of the ineffective assistance claim in any event as the record is not sufficiently developed to allow us to evaluate counsel's actions. *See United States v. Story*, 439 F.3d 226, 230-31 (5th Cir. 2006); *see also United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006).

Martinez-Lopez also argues that there is a clerical error in the judgment because it references both 8 U.S.C. § 1326(a) and (b)(1). *See* FED. R. CRIM. P. 36. There is no error as Martinez-Lopez was indicted for and in fact pleaded guilty to violating § 1326(a) and (b)(1).

AFFIRMED.