

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

No. 14-50109
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 21, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARVIN JOSUE HERNANDEZ-LOPEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:13-CR-813-1

Before PRADO, OWEN, and GRAVES, Circuit Judges.

PER CURIAM:*

Marvin Josue Hernandez-Lopez challenges the within-guidelines sentence imposed following his guilty plea conviction for illegal reentry following previous deportation. He argues that his sentence is substantively unreasonable because he was entitled to a downward departure based on cultural assimilation. He also argues that he was entitled to a downward

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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departure, pursuant to U.S.S.G. § 5K2.0 and U.S.S.G. § 5H1.3, based on “the immense psychological and mental hardship he has suffered in prison.”

To the extent that Hernandez-Lopez is challenging the district court’s refusal to downwardly depart from the recommended guidelines range, we do not have jurisdiction to review that decision. *See United States v. Barrera-Saucedo*, 385 F.3d 533, 535 (5th Cir. 2004). To the extent that he is challenging the denial of his request for downward variance, the record reflects that the district court considered Hernandez-Lopez’s arguments for a below-guidelines sentence, including his cultural assimilation argument. The district court, however, determined that “out of an abundance of mercy” it would sentence Hernandez-Lopez to 41 months, despite the record “justify[ing] something more than just the guidelines.” Hernandez-Lopez has failed to show that the district court failed to give proper weight to his arguments or any particular § 3553(a) factor. *See United States v. Lopez-Velasquez*, 526 F.3d 804, 807 (5th Cir. 2009). Hernandez-Lopez has failed to rebut the presumption of reasonableness that is accorded his within-guidelines sentence. *See United States v. Gomez-Herrera*, 523 F.3d 554, 565-66 (2008). Thus, he has failed to show that his sentence is substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 49-51 (2007).

AFFIRMED.