

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

No. 14-51336
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 2, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

VICTOR HUGO LEE-GUTIERREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:14-CR-1713-1

Before KING, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Victor Hugo Lee-Gutierrez (Lee) appeals the 21-month, bottom-of-the-guidelines sentence imposed following his guilty plea conviction for being found unlawfully present in the United States following deportation. His challenge to the substantive reasonableness of his sentence is reviewed for plain error. *See United States v. Peltier*, 505 F.3d 389, 391 (5th Cir. 2007).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Lee contends that his sentence is greater than necessary to achieve the sentencing goals of 18 U.S.C. § 3553(a) because his illegal reentry offense was essentially an international trespass and the illegal entry Guideline, U.S.S.G. § 2L1.2, is problematic because it is not empirically based and results in a double counting of his criminal history. Additionally, he asserts that the sentence is greater than necessary to promote respect for the law and that it fails to adequately account for his personal history and characteristics.

A sentence within a properly calculated Guidelines range is presumptively reasonable. *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009). Lee contends that the presumption should not be applied but concedes the issue is foreclosed and raises it only for possible further review. *See United States v. Duarte*, 569 F.3d 528, 530-31 (5th Cir. 2009).

This court has rejected challenges to the substantive reasonableness of a sentence based on the same international-trespass and double-counting arguments raised in this appeal. *See United States v. Juarez-Duarte*, 513 F.3d 204, 212 (5th Cir. 2008). Moreover, the record does not reflect that the sentence fails to “account for a factor that should receive significant weight, . . . gives significant weight to an irrelevant or improper factor, or . . . represents a clear error of judgment in balancing sentencing factors.” *Cooks*, 589 F.3d at 186. Lee’s dissatisfaction with the district court’s weighing of the § 3553(a) sentencing factors is insufficient to rebut the presumption of reasonableness. *See United States v. Ruiz*, 621 F.3d 390, 398 (5th Cir. 2010).

AFFIRMED.