

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

No. 15-50724
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 21, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESSE LEE POWELL, JR.,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:14-CR-1129

Before JOLLY, BENAVIDES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Jesse Lee Powell, Jr., appeals the within-guidelines sentence of 46 months in prison imposed following his guilty plea to being a felon in possession of a firearm. Powell argues that his sentence is substantively unreasonable because it is greater than necessary to achieve the goals of sentencing. More specifically, he contends that his sentence is excessive given

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 exceptionally poor physical health and the fact that he committed the offense as part of a plan to gather enough money to afford a kidney transplant.

We need not decide whether the plain-error standard of review is applicable here because Powell's sentence can be affirmed even under an abuse-of-discretion standard. *See United States v. Rodriguez*, 523 F.3d 519, 525 (5th Cir. 2008). Powell's sentence falls within the properly-calculated guidelines range, and it is thus afforded a rebuttable presumption of reasonableness. *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009).

Powell has not shown that his sentence does not account for a factor that should receive significant weight, gives significant weight to an irrelevant or improper factor, or reflects a clear error of judgment in balancing sentencing factors. *See Cooks*, 589 F.3d at 186. His mere disagreement with the district court's determination that a 46-month sentence is appropriate is insufficient to overcome the presumption of reasonableness afforded to his sentence. *See United States v. Alvarado*, 691 F.3d 592, 597 (5th Cir. 2012).

Accordingly, the judgment of the district court is AFFIRMED.