

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

No. 17-40589
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 5, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EMMANUEL SANTIAGO-MIJANGOS,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:16-CR-1002-1

Before BENAVIDES, SOUTHWICK, and COSTA, Circuit Judges.

PER CURIAM:*

Emmanuel Santiago-Mijangos pleaded guilty to illegal reentry into the United States, in violation of 8 U.S.C. § 1326(a), (b)(1), and was sentenced to 48 months of imprisonment, an upward variance from the guidelines range. On appeal, Santiago-Mijangos argues that the court's upward variance was substantively unreasonable. We reviews sentences, whether inside or outside the Guidelines, for reasonableness in light of the sentencing factors set forth

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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in 18 U.S.C. § 3553(a) and review the substantive reasonableness of a sentence for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 51 (2007). In reviewing an above-guidelines sentence for substantive reasonableness, we consider the totality of the circumstances, including the extent of any variance from the guidelines range, to determine whether the § 3553(a) factors support the sentence. *United States v. Gerezano-Rosales*, 692 F.3d 393, 400 (5th Cir. 2012). An above-guidelines sentence is unreasonable if “it (1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006). This court defers to the district court’s determination that the § 3553(a) factors, on the whole, merit an upward variance. *United States v. Brantley*, 537 F.3d 347, 349 (5th Cir. 2008).

In this case, the district court relied on appropriate § 3553(a) factors in determining that an upward variance was warranted, as its reasons addressed the nature and circumstances of Santiago-Mijangos’s offense, the need to protect the public from further crimes by Santiago-Mijangos, and the need to deter him from future criminal activity. Nothing suggests that the district court failed to consider a factor that should have received significant weight, gave significant weight to an improper factor, or made a clear error of judgment in balancing the sentencing factors. *See Smith*, 440 F.3d at 708. We therefore defer to the district court’s determination that the § 3553(a) factors, on the whole, warrant the variance, *see Brantley*, 537 F.3d at 349, and justify the extent of the upward variance imposed, *see United States v. Broussard*, 669 F.3d 537, 551 (5th Cir. 2012).

Accordingly, Santiago-Mijangos’s sentence is AFFIRMED.