

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 12, 2022

Lyle W. Cayce
Clerk

No. 21-50751
CONSOLIDATED WITH
No. 21-51187
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TIOFILO LOPEZ-MORALES,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-57-1
USDC No. 4:20-CR-590-1

Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Defendant-Appellant Tiofilo Lopez-Morales appeals the within-guidelines 46-month sentence imposed following his most recent illegal

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-50751
c/w No. 21-51187

reentry conviction and the consecutive within-guidelines 18-month sentence imposed following the revocation of his supervised release for a prior offense. He contends that the individual sentences, which are at the top of the respective recommended guidelines ranges, and the aggregate sentence are substantively unreasonable because his children are not being properly cared for in the United States. He contends that his latest reentry was to try and help his children, and that he has a plan to return to Guatemala and obtain dual citizenship in Guatemala for his children so that they may move to Guatemala and live with him. His request before the district court for a downward variance for these reasons was denied.

Lopez-Morales has not rebutted the presumption of reasonableness that attaches to a sentence within a properly calculated guidelines range. *See United States v. Badgett*, 957 F.3d 536, 541 (5th Cir. 2020); *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009). The district court considered Lopez-Morales's contentions in favor of a lower sentence. Its decision is entitled to deference. *See United States v. Campos-Maldonado*, 531 F.3d 337, 339 (5th Cir. 2008). Moreover, to the extent that Lopez-Morales challenges the district court's decision to have his sentences run consecutively, he has failed to show that the district court abused its discretion by doing so. *See* 18 U.S.C. § 3584(a); U.S.S.G. § 7B1.3(f), p.s. & comment. (n.4).

The judgments of the district court are AFFIRMED.