

United States Court of Appeals for the Fifth Circuit

No. 22-11119
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 8, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

AURELIO AZUA-MOCTEZUMA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:22-CR-168-1

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

PER CURIAM:*

Aurelio Azua-Moctezuma appeals the 24-month, above-guidelines prison sentence imposed following his guilty plea conviction for illegally reentering the United States. Azua-Moctezuma argues that his sentence is substantively unreasonable. Our review is for abuse of discretion. *See*

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Holguin-Hernandez v. United States, 140 S. Ct. 762, 766 (2020); *Gall v. United States*, 552 U.S. 38, 46-47, 49-51 (2007).

Azua-Moctezuma has not shown that the district court did not account for a factor that should have received significant weight, gave significant weight to an improper factor, or made a clear error in balancing the sentencing factors. *See United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013). The district court reviewed and adopted the presentence report, considered Azua-Moctezuma's mitigating arguments, and determined that an above guidelines range sentence was appropriate because of his serious criminal history and the need for deterrence. His protestations to the contrary notwithstanding, the district court clearly based the upward variance on Azua-Moctezuma's prior conviction for the sexual assault of a child. Despite his attempt to argue otherwise, Azua-Moctezuma ultimately argues that the district court should have weighed the sentencing factors differently, which "is not a sufficient ground for reversal." *United States v. Malone*, 828 F.3d 331, 342 (5th Cir. 2016); *see United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017).

AFFIRMED.