United States Court of Appeals for the Fifth Circuit

No. 24-20020
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
August 1, 2024
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GERARDO RAMIREZ-ALVARADO,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CR-210-1

Before SMITH, STEWART, and DUNCAN, *Circuit Judges*.

PER CURIAM:[*]

Gerardo Ramirez-Alvarado appeals the above-guidelines sentence imposed after he pleaded guilty to illegal reentry. He contends his 60-month term of imprisonment is substantively unreasonable because the district court made a clear error of judgment in balancing sentencing factors and failed to account for factors that should have received significant weight.

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

We review a sentence for substantive reasonableness by considering "the totality of the circumstances, including the extent of any variance from the Guidelines range." *Gall v. United States*, 552 U.S. 38, 51 (2007). As district courts are better placed "to find facts and judge their import . . . with respect to a particular defendant," this review is "highly deferential." *United States v. Fraga*, 704 F.3d 432, 439 (5th Cir. 2013) (internal quotation marks and citation omitted). The Government argues that some of Ramirez-Alvarado's arguments are unpreserved, but we need not reach that question because it is not dispositive. *See United States v. Holguin-Hernandez*, 955 F.3d 519, 520 n.1 (5th Cir. 2020).

The district court sentenced Ramirez-Alvarado after articulating and inviting the parties to address concerns based on his criminal history, which it then invoked to explain the sentence. Ramirez-Alvarado contends his history is unexceptional and thus insufficient to justify a variance. A sentencing court "must make an individualized assessment," however, and in doing so may not presume the guidelines range is reasonable. *Gall*, 552 U.S. at 50. It is within the court's discretion to conclude that the advisory range gives insufficient weight to one or more sentencing factors, among them the defendant's history and characteristics. *See United States v. Lopez-Velasquez*, 526 F.3d 804, 807 (5th Cir. 2008); 18 U.S.C. § 3553(a)(1). The fact that Ramirez-Alvarado's history can be likened to that of other reentry defendants accordingly fails to demonstrate that a variance was improper. Similarly, the district court was not required to accept that his unscored convictions were too remote to be probative of future conduct. *See, e.g.*, *Fraga*, 704 F.3d at 440-41.

Ramirez-Alvarado's remaining arguments fail as well. Although he posits that the district court was required to consider changes in the law pertaining to his prior reentry convictions, he cites no authority supporting this claim. A sentencing court does have a duty to consider the need to avoid

unwarranted sentence disparities. § 3553(a)(6). But "a checklist recitation of the section 3553(a) factors" is not required. *United States v. Washington*, 480 F.3d 309, 314 (5th Cir. 2007) (quoting *United States v. Smith*, 440 F.3d 704, 707 (5th Cir. 2006)). Nor will we infer error based on the size of the variance, as this court has upheld similar or greater deviations from the Guidelines in the sentencing of other reentry defendants. *See, e.g.*, *Lopez-Velasquez*, 526 F.3d at 805; *United States v. Herrera-Garduno*, 519 F.3d 526, 531-32 (5th Cir. 2008).

In sum, Ramirez-Alvarado shows no error. We therefore AFFIRM the judgment of the district court.