IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5479
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIKE RAMOS-SERNA,

Defendant-Appellant.

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Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:93-CR-20028

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(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Mike Ramos-Serna appeals his conviction of alien-smuggling. "When departing from the guidelines, . . . the district court must articulate reasons justifying the upward departure. If the reasons are `acceptable' and `reasonable,' this Court will affirm." United States v. Murillo, 902 F.2d 1169, 1172 (5th Cir. 1990)(citations omitted). The reasons advanced by a district judge to support an upward departure are findings of fact and are reviewed under the clear-error standard. United States v. Pennington, 9 F.3d 1116, 1118 (5th Cir. 1993).

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

A long criminal record that demonstrates "a disrespect for the law not adequately reflected by a category VI criminal history," id., may support an upward departure. Id. So may the staleness of prior convictions for purposes of calculating the defendant's criminal history score and extreme leniency in sentencing for previous offenses. United States v. Jones, 905 F.2d 867, 869 (5th Cir. 1990).

Ramos' first four convictions were stale for criminal-history calculations. While many of his violations are in the realm of petty offenses, the district court's finding that Ramos' record reflects a lack of respect for the law is not clearly erroneous. Additionally, despite having a lengthy record of infractions, Ramos has spent a total of 200 days in jail. The district court's finding that the Texas courts had been unduly lenient on Ramos is not clearly erroneous.

"Without an explanation of why a defendant's [substance abuse] is so extraordinary as to warrant an upward departure, this factor does not justify a departure from the guidelines." United States v. Williams, 937 F.2d 979, 983 (5th Cir. 1991), overruled on other grounds by United States v. Lambert, 984 F.2d 658, 662 (5th Cir. 1993)(en banc). Ramos' four DWI convictions indicate that he drove while drunk on four occasions -- an act placing the general motoring public at risk. Inasmuch as Ramos' dependency can be linked directly to repeated dangerous criminal acts, that dependency is sufficiently extraordinary to serve as a reason for departure.

"[W]hen a district court intends to depart above Category

VI, it should still stay within the guidelines by considering sentencing ranges for higher base offense levels." Lambert, 984 F.2d at 663. This Court does not require a mechanical discussion of each range rejected by a sentencing court when the reasons for rejection are implicit or explicit in the sentencing court's reasons. Id. The district judge in Ramos' case explicitly rejected all offense levels below the level yielding the maximum statutory sentence as too lenient. The district judge therefore followed proper departure procedure.

Finally, the departure in Ramos' case is reasonable. First, the district judge's finding that Ramos posed a serious threat of recidivism is not clearly erroneous given Ramos' criminal record. Ramos' previous convictions evidently have had no deterrent effect on his criminal proclivities. Second, this Court has affirmed similar departures as reasonable. See United States v. Harvey, 897 F.2d 1300, 1305 (5th Cir.), cert. denied, 498 U.S. 1003 (1990), overruled on other grounds by Lambert, 984 F.2d at 662; United States v. Geiger, 891 F.2d 512, 513-14 (5th Cir. 1989), cert. denied, 494 U.S. 1087 (1990), overruled on other grounds by Lambert, 984 F.2d at 662.

AFFIRMED.