

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5630
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GILBERTO ALANIZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:93-CR-14-6
- - - - -
(July 22, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Gilberto Alaniz appeals his sentence, arguing that the district court erred in upwardly departing from the guidelines. "A departure from the guidelines will be affirmed if the district court offers acceptable reasons for the departure and the departure is reasonable." United States v. Lambert, 984 F.2d 658, 663 (5th Cir. 1993) (en banc) (internal quotations and citations omitted). This Court reviews a district court's

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

decision to depart under an abuse of discretion standard. Id. at 661.

The district court's reasons amount to findings of fact reviewable for clear error. United States v. Pennington, 9 F.3d 1116, 1118 (5th Cir. 1993). The district court's findings that Alaniz had a history of controlled substance convictions, a limited employment history, and three failed periods of supervised release are not clearly erroneous.

Alaniz contends that the district erred in considering his lack of a steady work history, lack of marketable skills, negative net worth, and association with less than desirable individuals in determining that an upward departure was warranted. Although the PSR notes those factors, the district court specifically relied only on limited employment. In any event, the district court departed upward primarily because it found that Alaniz's criminal history category did not adequately represent the seriousness of his past criminal conduct, nor the likelihood that he would commit other crimes. § 4A1.3; Lambert, 984 F.2d at 660 (internal quotations omitted).

Alaniz's four prior drug convictions, two of which did not result in additional criminal history points, as well as three failed periods of supervised release, are acceptable reasons for upward departure. See Lambert, 984 F.2d at 664; Pennington, 9 F.3d 1116, 1118 (5th Cir. 1993).

Alaniz also contends that the extent of departure was unreasonable. Alaniz received a four-point reduction in his offense level for being a minimal participant. A departure to

the next highest criminal history category was not unreasonable, and therefore was not an abuse of discretion. See, e.g., United States v. Chappell, 6 F.3d 1095, 1101 n.27, 1102 (5th Cir. 1993) (upward departure of 17 months to 54-month term reasonable where defendant had 25 criminal history points), cert. denied, 114 S.Ct. 1232 and 114 S.Ct. 1235 (1994).

AFFIRMED.