

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50831
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TONY YBARRA, III,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-92-CR-074
- - - - -

June 30, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Tony Ybarra, III, pleaded true to the allegations in the petition to revoke his supervised release, and the district court revoked his supervised release and sentenced him to 21 months imprisonment. This court will uphold the sentence imposed following revocation of supervised release unless it is in violation of law or it is plainly unreasonable. United States v. Giddings, 37 F.3d 1091, 1093 (5th Cir. 1994), cert. denied, 115 S. Ct. 1323 (1995).

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

The sentence imposed was not in violation of law because it was within the statutory maximum. See 18 U.S.C. §§ 3559(a)(3), 3583(e)(3); 21 U.S.C. § 841. Ybarra argues, however, that is "plainly unreasonable" because the sentence was a substantial departure from the recommended guideline range and, therefore, defeats the goal of the Sentencing Guidelines to promote uniformity in sentencing and to discourage wide disparity in sentences. The district court stated for the record that it was upwardly departing because Ybarra remained a fugitive for 21 months; failed to make any attempts to contact the United States probation officer while he was a fugitive; and failed to comply with the conditions of his supervised release. The district court's upward departure was not plainly unreasonable. See United States v. Mathena, 23 F.3d 87, 93-94 (5th Cir. 1994).

AFFIRMED.