

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-50607  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SANTIAGO NKO-SIAKA, a/k/a Siaka Nko Santiago,  
a/k/a Sam Nko Siaka Smith,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-96-CR-16-ALL  
- - - - -

December 19, 1996

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Santiago Nko-Siaka challenges his sentence for his conviction pursuant to 18 U.S.C. § 1546(a).

He raises the following issues: 1) U.S.S.G. § 2L2.2 contemplates bribery within the heartland of cases covered by the guideline, and therefore, bribery could not support the district court's upward departure; 2) the court's other reason for the

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

upward departure, Nko-Siaka absconding from deportation proceedings, was unclearly stated so that it could not be grounds for the departure; 3) the Sentencing Commission considered deportation in several offense guidelines and in § 2L2.2, and this consideration precludes the court's use of absconding as grounds for a departure; and 4) the extent of the departure was based on the court's legal error in its analogy to another offense guideline without consideration of Nko-Siaka's acceptance of responsibility in the analogy.

From our review of the appellate record, we conclude that the district court did not abuse its discretion in its upward departure. See United States v. Ashburn, 38 F.3d 803, 807 (5th Cir. 1994) (en banc), cert. denied, 115 S. Ct. 1969 (1995). Further, Nko-Siaka's remaining issues\*\* do not rise to the level of plain error. See United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc), cert. denied, 115 S. Ct. 1266 (1995).

AFFIRMED.

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\*\* Nko-Siaka raised for the first time on appeal the following issues: 1) the evidence did not establish that he committed bribery under state law; 2) even if he did commit bribery, such bribery would have been relevant conduct of the offense of conviction; 3) the Government failed to demonstrate that Nko-Siaka would have been deported if he had attended the deportation proceedings; and 4) the deportation proceedings were not related to the offense of conviction.