

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-41427  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NICANDRO CASTRO-ALCALA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 98-CR-424-1  
- - - - -

August 27, 1999

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

PER CURIAM:\*

Nicandro Castro-Alcala ("Castro") challenges his guilty-plea conviction for illegal reentry of a deported alien, 8 U.S.C. § 1326. Castro contends that the district court erred by failing to comply with Fed. R. Crim. P. 11(c)(1) during arraignment and that the failure requires that his conviction be reversed.

This appeal is frivolous. In reviewing whether the district court complied with the dictates of Rule 11, this court "conduct[s] a straightforward, two-question 'harmless error'

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

analysis: (1) Did the sentencing court in fact vary from the procedures required by Rule 11, and (2) if so, did such variance affect substantial rights of the defendant?" United States v. Johnson, 1 F.3d 296, 298 (5th Cir. 1993) (en banc). Although he acknowledges his argument is subject to harmless-error review, counsel makes no argument that Castro's substantial rights were affected; accordingly, there is no reversible error. See id.

The appeal is without arguable merit and is therefore frivolous. Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); 5th Cir. R. 42.2. Accordingly, it is DISMISSED.