

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-40927  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER NIETO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. C-00-CR-138-2  
- - - - -

June 13, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:\*

Javier Nieto appeals his sentence following his conviction for knowingly transporting illegal aliens by means of a motor vehicle, 8 U.S.C. §§ 1324(a)(1)(A)(ii) and 1326(a)(1)(B)(ii). We have reviewed the record and the briefs of the parties, and we discern no reversible error.

Nieto's 12-month sentence was within the applicable sentencing guidelines range, was not imposed in violation of law, and was not unreasonable given the statutory maximum. His \$3,500 fine also was within the guidelines range of \$2,000 to \$20,000

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and was substantially less than the statutory maximum of \$250,000. U.S.S.G. § 5E1.2(c)(3); 18 U.S.C. § 3571(b)(3).

That codefendant Ernesto Erias-Rodriguez received a lesser sentence provides no basis for relief. The fact that another party received a lower sentence than did Nieto does not alone make Nieto's otherwise legal sentence a violation of the Sentencing Guidelines. United States v. Puma, 937 F.2d 151, 156 (5th Cir. 1992).

Additionally, U.S.S.G. § 6B1.2(b)(1) states that the court may accept a sentencing recommendation if it is within the guidelines, but it does not require the court to do so. United States v. Medina-Saldana, 911 F.2d 1023, 1024-25 (5th Cir. 1990). Nor is the district court required to make an elaborate statement of its reasons for a sentence imposed within the applicable guidelines range when the facts are undisputed and the court's calculation of the sentencing range under the guidelines is correct. Id.

Nieto's arguments on appeal are wholly without merit. His appeal is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.