

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2021

Lyle W. Cayce
Clerk

No. 21-10254
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOEL CASTRO-LOPEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-259-1

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Joel Castro-Lopez appeals his 72-month sentence for illegal reentry under 8 U.S.C. § 1326(a) and (b)(2). He concedes that the district court provided adequate reasons to support the upward variance but asserts that the court was further obligated under *Rita v. United States*, 551 U.S. 338

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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(2007), to specifically address his nonfrivolous argument for a lower sentence.

The record as a whole reflects that the district court considered Castro-Lopez's argument that he returned to the United States because his daughter was ill with COVID-19. The argument appeared in the presentence report, which the district court adopted, and was repeated by defense counsel at sentencing and by Castro-Lopez during his allocution. The district court's express reasons for the sentence provided a reasoned basis for the upward variance under the sentencing factors in 18 U.S.C. § 3553(a) and reflected an implicit determination that his criminal history, history of immigration violations, and likelihood of reoffending outweighed any mitigating effect of his motive for returning. Accordingly, the court did not err by failing to reference the argument. *See Rita*, 551 U.S. at 343-45, 356, 358-59; *United States v. Coto-Mendoza*, 986 F.3d 583, 584, 586-87 & nn.4-6 (5th Cir.), *cert. denied*, 2021 U.S. LEXIS 3947 (2021) (No. 20-8439); *United States v. Becerril-Pena*, 714 F.3d 347, 351-52 (5th Cir. 2013). The Government's motion for summary affirmance is DENIED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). In the interest of judicial economy, the alternative motion for an extension of time to file a brief on the merits is DENIED as unnecessary. The judgment of the district court is AFFIRMED.