

United States Court of Appeals for the Fifth Circuit

No. 26-40149
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 14, 2026

Thomas B. Plunkett, III
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CESAR ARMIJO-MERCADO,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:25-CR-1942-1

Before STEWART, RICHMAN, and HIGGINSON, *Circuit Judges*.

PER CURIAM:*

Cesar Armijo-Mercado appeals the 18-month within-guidelines sentence imposed by the district court following his guilty plea conviction for being found in the United States after a previous deportation. He argues his sentence is substantively unreasonable because his criminal history category overstated the seriousness of his criminal history and because the district court did not give him credit toward his federal sentence for the time he spent

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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in state custody. He preserved his claims by raising them in the district court and by advocating for a lesser sentence. *See Holguin-Hernandez v. United States*, 589 U.S. 169, 174-75 (2020). We “appl[y] a rebuttable presumption of reasonableness to a properly calculated, within-guidelines sentence.” *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009) (internal quotation marks and citation omitted). To the extent he is challenging the criminal history guidelines provisions as being too punitive, we have rejected such arguments. *See United States v. Lara*, 23 F.4th 459, 485-86 (5th Cir. 2022). To the extent he is arguing that the district court gave too much weight to his criminal history category, his argument is unavailing as the district court was entitled to conclude that the guidelines range gave too much or too little weight to a factor and adjust the sentence based on the 18 U.S.C. § 3553(a) factors. *See United States v. Lopez-Velasquez*, 526 F.3d 804, 807 (5th Cir. 2008).

Although the district court could not award credit against his federal sentence for time he spent in state custody, it could consider his time in state custody when deciding the appropriate sentence. *See United States v. Madrid*, 978 F.3d 201, 208 (5th Cir. 2020). The district court considered Armijo-Mercado’s arguments, his allocution, and the presentence report, but it ultimately chose not to vary downward based on the § 3553(a) factors. Armijo-Mercado has not rebutted the presumption of reasonableness that applies to his within-guidelines sentence as he has not shown that the district court failed to consider a factor that should receive significant weight, put too much weight on an improper or irrelevant factor, or made a clear error in balancing the § 3553(a) factors. *See Cooks*, 589 F.3d at 186.

AFFIRMED.