

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

August 6, 2008

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No. 07-31058  
Summary Calendar

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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MICHAEL A ELLSWORTH

Defendant-Appellant

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:07-CR-171-1

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Before SMITH, GARZA and PRADO, Circuit Judges.

PER CURIAM:\*

Michael A. Ellsworth appeals the 60-month non-guidelines sentence imposed following his guilty plea conviction for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Ellsworth argues for the first time on appeal that his sentence is substantively unreasonable because it reflects the district court's consideration of a prior conviction for illegal possession of a firearm, for which he asserts he was unrepresented.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

When the district court imposes a non-guidelines sentence, we “may consider the extent of the deviation, but must give due deference to the district court’s decision that the [18 U.S.C.] § 3553(a) factors, on a whole, justify the extent of the variance.” *Gall v. United States*, 128 S. Ct. 586, 596-97 (2007). Even if we “might reasonably have concluded that a different sentence was appropriate, [this] is insufficient to justify reversal of the district court.” See *id.*

We “consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard.” *Gall*, 128 S. Ct. at 59; see *United States v. Rodriguez*, 523 F.3d 519, 524-25 (5th Cir. 2008), petition for cert. filed (June 30, 2008) (No. 08-5101). The district court provided extensive justification for the sentence and concluded that a non-guidelines sentence of 60 months of imprisonment was appropriate. In light of the deferential standard set forth in *Gall*, 128 S. Ct. at 597-98, we find that the sentence imposed by the district court was not substantively unreasonable or an abuse of discretion.

Ellsworth also argues that the district court was required to provide him with notice before imposing a non-guidelines sentence. As Ellsworth concedes, this argument is foreclosed by circuit precedent. *United States v. Mejia-Huerta*, 480 F.3d 713, 722-23 (5th Cir. 2007), cert. denied, 2008 WL 2484735 (June 23, 2008) (No. 06-1381); see also *United States v. Irizarry*, 128 S. Ct. 2198, 2202-04 (2008).

Accordingly, the judgment of the district court is **AFFIRMED**.