IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
November 22, 2010
Lyle W. Cayce
Clerk

No. 10-50291
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL SEAN GREEN,

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 1:09-CR-525-1

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:[*]

Michael Sean Green appeals the sentence imposed following his guilty plea conviction for conspiracy to possess with intent to distribute marijuana. The district court sentenced Green to a within-guidelines sentence of 90 months in prison and four years of supervised release. He argues that his sentence was substantively unreasonable because: (1) the drug-trafficking guideline, U.S.S.G. § 2D1.1, tends to overstate the sentence necessary in a mine-run case because it is not based upon empirical data; (2) his risk of recidivism is low because he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

is a first-time offender; and (3) his devotion to his young son warranted a lower sentence.

As Green did not challenge the drug-trafficking guideline as flawed in district court, that challenge is reviewed only for plain error. *See United States v. Campos-Maldonado*, 531 F.3d 337, 339 (5th Cir. 2008). His challenge to the drug-trafficking guideline based upon its alleged lack of supporting empirical data is unpersuasive. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 366-67 (5th Cir.), *cert. denied*, 130 S. Ct. 192 (2009); *Campos-Maldonado*, 531 F.3d at 338-39. His within-guideline sentence is afforded a presumption of reasonableness. *See Mondragon-Santiago,* 564 F.3d at 367. Green has not shown sufficient reason for this court to disturb the sentence imposed by the district court.

The district court's judgment is AFFIRMED.