

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 2, 2014

Lyle W. Cayce
Clerk

No. 13-11395
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FERMIN VARGAS-VALENCIA,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 4:13-CR-104-2

Before REAVLEY, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Fermin Vargas-Valencia (Vargas) appeals the sentence imposed following his guilty plea conviction of conspiracy to possess with intent to distribute a controlled substance. He argues that his sentence is substantively unreasonable because his 168-month sentence, which is 81 months higher than a similarly situated co-conspirator's sentence, results in an unwarranted sentencing disparity.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 13-11395

Vargas has not shown that the challenged difference between his sentence, which was based on accurate drug quantity information, and his co-conspirator's sentence, which was not, is the type of unwarranted sentencing disparity that Congress sought to eliminate under 18 U.S.C. § 3553(a)(6). *See Pepper v. United States*, 131 S. Ct. 1229, 1248-49 (2011). Vargas fails to rebut the presumption that his within-guidelines sentence is substantively reasonable. *See United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009).

Accordingly, the judgment of the district court is AFFIRMED.