

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

November 29, 2021

Lyle W. Cayce  
Clerk

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No. 21-10210  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

FREDY ZAMORA-REYES,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:20-CR-121-1

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Before KING, COSTA, and HO, *Circuit Judges*

PER CURIAM:\*

Fredy Zamora-Reyes appeals his 95-month within-guidelines sentence imposed for his illegal reentry conviction. First, he argues that 8 U.S.C. § 1326(b) is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and that his guilty plea was not knowing and voluntary because

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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the district court did not advise him that a prior conviction is an element of the offense under § 1326(b). As he concedes, however, this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27, 239-47 (1998). See, e.g., *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014).

Next, Zamora-Reyes contends that his sentence is substantively unreasonable. Our review is for abuse of discretion. See *Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766 (2020); *Gall v. United States*, 552 U.S. 38, 46-47, 49-51 (2007).

The within-guidelines sentence that the district court imposed is entitled to a presumption of reasonableness. See *United States v. Hernandez*, 876 F.3d 161, 166 (5th Cir. 2017). Zamora-Reyes's disagreement with the district court's balancing of the sentencing factors does not rebut that presumption, see *United States v. Koss*, 812 F.3d 460, 472 (5th Cir. 2016), and we will not reweigh the sentencing factors, see *United States v. Heard*, 709 F.3d 413, 435 (5th Cir. 2013). Moreover, Zamora-Reyes has not shown that the district court failed to account for a factor that should have received significant weight, that it gave "significant weight to an irrelevant or improper factor," or that it made "a clear error of judgment in balancing the sentencing factors." *Hernandez*, 876 F.3d at 166. Thus, the judgment of the district court is AFFIRMED.