

December 23, 2013

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RENÉ MADRID-APODACA,

Defendant - Appellant.

No. 13-2171

(D.C. No. 2:13-CR-02515-JB-1)

(D. N.M.)

ORDER AND JUDGMENT*

Before **HARTZ, O'BRIEN**, and **GORSUCH**, Circuit Judges.

After René Madrid-Apodaca pleaded guilty to illegally reentering this country after a prior deportation, he and the government agreed to a sentence of between two and eight months. In considering the various sentencing factors prescribed by 18 U.S.C. § 3553(a), however, the district court judged a nine month sentence more appropriate. The court emphasized, among other things, Mr. Madrid-Apodaca's record of recidivism and the need for deterrence — noting

* After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f) and 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

that Mr. Madrid-Apodaca had already been removed for illegally entering this country five times, and that an eight month sentence he received for a prior reentry failed to deter this reentry. Before us, Mr. Madrid-Apodaca has filed a 49-page brief arguing that the district court's announced sentence, one month more than he agreed to, is substantively unreasonable. But a district court's substantive judgment at sentencing is reviewed on appeal only under a highly deferential abuse of discretion standard — a standard this court deems presumptively satisfied where, as here, the district court's sentence itself falls below the range recommended by the advisory guidelines. *See United States v. Gutierrez-Gonzalez*, 271 F. App'x 786, 788 (10th Cir. 2008); *cf. United States v. Kristl*, 437 F.3d 1050, 1055 (10th Cir. 2006). After carefully reviewing Mr. Madrid-Apodaca's submission, we cannot conclude he has borne his burden of overcoming that presumption and we thus affirm.

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge