

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-16430
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT AUGUST 1, 2007 THOMAS K. KAHN CLERK

D. C. Docket No. 06-20484-CR-FAM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR AGUILERA FABIAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(August 1, 2007)

Before TJOFLAT, ANDERSON and BARKETT, Circuit Judges.

PER CURIAM:

The sole issue in this appeal of the prison sentence imposed for the offense

of re-entering the United States after being deported, in violation of 8 U.S.C. § 1326, is whether the sentence is unreasonable – although imposed at the bottom of the Guidelines sentence range – because the district court treated the Guidelines sentence range as “presumptively correct.” The record of the sentencing hearing contains no support for the notion that the court treated the sentence range as presumptively correct. To the contrary, after hearing defense counsel’s lengthy argument for a lower sentence than the one the defendant received, the court announced that the Guidelines sentence range was not presumptively correct.

What is more, in fashioning the defendant’s sentence, the court properly consulted the Guidelines as advisory, painstakingly considered the sentencing factors set out in 18 U.S.C. § 3553(a), took into account everything the defendant and his attorney had to say, and looked for a way in which to impose a sentence below the prescribed sentence range. In the end, after taking the § 3553(a) factors into account, the court concluded that a sentence below that sentence range would be inappropriate.

The sentence in this case is not unreasonable.

AFFIRMED.