

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-4576

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERTO VALENZUELA-CUEVES,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., Chief District Judge. (1:10-cr-00419-WO-1)

Submitted: March 26, 2013

Decided: March 28, 2013

Before DUNCAN, FLOYD, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Louis C. Allen III, Federal Public Defender, Mireille P. Clough, Assistant Federal Public Defender, Winston-Salem, North Carolina, for Appellant. Ripley Rand, United States Attorney, Sandra J. Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alberto Valenzuela-Cueves appeals the 168-month sentence imposed by the district court following his guilty plea to possession with intent to distribute 6,928.7 grams of cocaine and 1,747.9 grams of cocaine base, in violation of 21 U.S.C.A. § 841(a)(1), (b)(1)(A) (West 1999 & Supp. 2012). On appeal, Valenzuela-Cueves contends that the district court's sentence was substantively unreasonable when measured against the 18 U.S.C. § 3553(a) (2006) factors. Finding no error, we affirm.

We must evaluate a procedurally reasonable sentence* for substantive reasonableness, "tak[ing] into account the totality of the circumstances." Gall v. United States, 552 U.S. 38, 51 (2007). If the sentence imposed is within the appropriate Sentencing Guidelines range, as in this case, it is presumptively reasonable. United States v. Abu Ali, 528 F.3d 210, 261 (4th Cir. 2008). The presumption may be rebutted by a showing "that the sentence is unreasonable when measured against the § 3553(a) factors." United States v. Montes-Pineda, 445 F.3d 375, 379 (4th Cir. 2006) (internal quotation marks omitted). We conclude that, under the totality of the circumstances, Valenzuela-Cueves failed to rebut the presumption

* Valenzuela-Cueves does not challenge on appeal the procedural reasonableness of the sentence.

of reasonableness afforded to the within-Guidelines sentence. Thus, the district court did not abuse its discretion in sentencing Valenzuela-Cueves to 168 months' imprisonment. See United States v. Lynn, 592 F.3d 572, 576, 578 (4th Cir. 2010) (providing standard of review).

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED