

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

United States Court of Appeals
Fifth Circuit

FILED

July 24, 2009

No. 08-40870
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RODOLFO JASSO-PANTOJA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:08-CR-545-ALL

Before SMITH, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Rodolfo Jasso-Pantoja (Jasso) appeals the 46-months sentence imposed following his guilty plea conviction for being illegally present in the United States after having been deported. Jasso argues that the district court committed reversible procedural error by failing to provide an adequate explanation of the within-guidelines sentence in light of the nonfrivolous

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

arguments for a sentence below the Guidelines. He asserts that review should be de novo.

Jasso did not preserve the error he now seeks to raise on appeal. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009). Accordingly, review is for plain error. *Id.* To show plain error, Jasso must show a forfeited error that is clear or obvious and that affects his substantial rights. *Puckett v. United States*, 129 S. Ct. 1423, 1429 (2009). If Jasso makes such a showing, this court has the discretion to correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

Even assuming that the district court failed to adequately explain the sentence imposed, Jasso cannot demonstrate plain error. *See Mondragon-Santiago*, 564 F.3d at 364-65. Jasso's 46-month sentence is within the advisory guidelines range. Furthermore, he fails to show that an explanation for his sentence would have changed his 46-month sentence. Thus, Jasso has failed to show that his substantial rights were affected. *See id.*

AFFIRMED.