

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2008

No. 08-50306
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

FRANCISCO ZAMARRON-MARTINEZ

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:07-CR-2551-ALL

Before DAVIS, WIENER, and PRADO, Circuit Judges.

PER CURIAM:*

Francisco Zamarron-Martinez (Zamarron) pleaded guilty to the charge of entering the United States illegally after having been deported previously. Because Zamarron had been convicted previously of a crime of violence, Zamarron's offense level was adjusted upward by 16 levels pursuant to U.S.S.G. § 2L1.2(b)(1)(A). Zamarron requested a variance from the guidelines sentence. The request was denied, and Zamarron was sentenced in the middle of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

guidelines imprisonment range to a 79-month term of imprisonment and to a three-year period of supervised release.

Zamarron contends that his sentence of imprisonment was greater than necessary to accomplish the goals of sentencing listed in 18 U.S.C. § 3553(a)(2). Zamarron concedes that this court ordinarily applies a presumption of reasonableness to within-guideline sentences. See *United States v. Campos-Maldonado*, 531 F.3d 337, 338 (5th Cir.), cert. denied, 129 S. Ct. 328 (2008); *United States v. Gomez-Herrera*, 523 F.3d 554, 565-66 (5th Cir. 2008). Citing *Kimbrough v. United States*, 128 S. Ct. 558, 574-75 (2007), he contends that the presumption should not apply in this case because § 2L1.2 is not empirically supported. Zamarron points out that the instant offense did not involve violent conduct and did not pose a danger to others. He contends that the offense was not inherently evil and “was, at bottom, an international trespass.” He contends also that the guidelines range did not account for his benign motivation for reentering the United States—to be with his sick mother.

We decline to reconsider the application of the presumption in light of the undeveloped record. Zamarron’s reliance upon *Kimbrough* to challenge the appellate presumption is misplaced, and he has failed to show that the presumption should not be applied. The district court considered Zamarron’s request for leniency in light of his personal circumstances, but it ultimately determined that a sentence within the guidelines range was appropriate. Zamarron’s within-guidelines sentence is entitled to a rebuttable presumption of reasonableness. See *Campos-Maldonado*, 531 F.3d at 338; *Gomez-Herrera*, 523 F.3d at 565-66. Because Zamarron has failed to make a showing sufficient to rebut that presumption, the district court’s judgment is **AFFIRMED**.