

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 24, 2009

No. 08-50977
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARCELINO DOMINGUEZ-LUNA,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:08-CR-81-2

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Marcelino Dominguez-Luna (Dominguez) was convicted by a jury of two counts of transporting illegal aliens for financial gain in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II). The district court sentenced Dominguez to 45 months of imprisonment on each count of conviction, to run concurrently, followed by a three-year term of supervised release on each count, also to run concurrently. Dominguez now appeals his sentence, arguing that the court violated his due process rights by relying on an accomplice's uncorroborated

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

hearsay statements in the presentence report (PSR) to increase the number of aliens that he was accountable for transporting, and that this resulted in a higher offense level and sentence.

The use of hearsay at sentencing does not violate a defendant's due process rights so long as the information has "some minimal indicium of reliability" and "bear[s] some rational relationship to the decision to impose a particular sentence." *United States v. Young*, 981 F.2d 180, 187-88 (5th Cir. 1992) (internal quotation and citation omitted). Moreover, "[a]s a general rule, information in the [PSR] is presumed reliable and may be adopted by the district court without further inquiry if the defendant fails to demonstrate by competent rebuttal evidence that the information is materially untrue, inaccurate or unreliable." *United States v. Carbajal*, 290 F.3d 277, 287 (5th Cir. 2002) (internal quotation marks and citation omitted).

At sentencing, the district court found that the testimony of a witness sufficiently corroborated the hearsay statements contained in the PSR. Dominguez then failed to show by competent rebuttal evidence that the statements were "materially untrue, inaccurate or unreliable." *Id.* We thus find no error in connection with the district court's decision to rely on the statements at sentencing.

Accordingly, the judgment of the district court is AFFIRMED.