

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

United States Court of Appeals
Fifth Circuit

FILED

October 27, 2010

No. 10-50222
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ONARIO GONZALEZ-MORALES, also known as Justiniano Gonzalez,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:09-CR-2779-1

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Onario Gonzalez-Morales (Gonzalez) appeals following his guilty plea conviction for illegal reentry in violation of 8 U.S.C. § 1326. The district court imposed a sentence of 24 months in prison, to be followed by a three-year term of nonreporting supervised release. On appeal, Gonzalez argues that the sentence was greater than necessary to meet the sentencing goals outlined in 18 U.S.C. § 3553(a).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 10-50222

Because Gonzalez did not object to the imposed sentence as unreasonable, we review this claim for plain error. *United States v. Peltier*, 505 F.3d 389, 391-92 (5th Cir. 2007). Gonzalez’s disagreement with the within-guidelines sentence imposed does not suffice to rebut the presumption of reasonableness. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Campos-Maldonado*, 531 F.3d 337, 338 (5th Cir. 2008); *United States v. Gomez-Herrera*, 523 F.3d 554, 565-66 (5th Cir. 2008).

Gonzalez raises two additional arguments, which he acknowledges are foreclosed by our precedent, to preserve for further review. He argues that, in light of *Kimbrough v. United States*, 552 U.S. 85, 109-10 (2007), the presumption of reasonableness does not apply to his within-guidelines sentence because the illegal reentry Guideline, U.S.S.G. § 2L1.2, lacks an empirical basis. We have consistently rejected Gonzalez’s argument, concluding that *Kimbrough* does not question the presumption of reasonableness and does not require district or appellate courts to independently analyze the empirical grounding behind each individual Guideline. *See United States v. Duarte*, 569 F.3d 528, 530-31 (5th Cir.), *cert. denied*, 130 S. Ct. 378 (2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 366-67 (5th Cir.), *cert. denied*, 130 S. Ct. 192 (2009).

Gonzalez also argues that the Guidelines produce unwarranted sentencing disparities between defendants who can participate in a fast-track program and defendants who cannot. We have held that “any sentencing disparity result from fast track disposition is not unwarranted.” *Gomez-Herrera*, 523 F.3d at 563. Because Gonzalez has not shown that his 24-month prison sentence is substantively unreasonable, the judgment of the district court is AFFIRMED.