

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

United States Court of Appeals
Fifth Circuit

FILED

August 21, 2013

Lyle W. Cayce
Clerk

No. 12-41247

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RUBEN GARCIA-MOJICA, also known as Alfredo Zuniga-Mojica,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:12-CR-569-1

Before HIGGINBOTHAM, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:*

Ruben Garcia-Mojica appeals the 36-month sentence imposed following his guilty plea conviction for being found unlawfully present in the United States following deportation. Garcia-Mojica argues that his above-guidelines sentence is procedurally unreasonable because the sentencing court made “unfounded assumptions” concerning his prior convictions for alcohol-related driving offenses. He contends that the court failed to consider mitigating evidence and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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did not provide adequate reasons for imposing a sentence that is a 15-month variance above the sentencing guidelines range.

Because Garcia-Mojica did not object at sentencing that the district court committed a procedural error, we review for plain error. *See United States v. Whitelaw*, 580 F.3d 256, 259 (5th Cir. 2009). In light of his admissions at sentencing concerning his past conduct and the district court's extensive explanation for the sentence it selected, Garcia-Mojica has not demonstrated that the district court failed to articulate adequate reasons for the sentence and, thus, he has failed to show procedural error, plain or otherwise, that renders his sentence unreasonable. *See United States v. Gall*, 552 U.S. 38, 51 (2007); *Puckett v. United States*, 556 U.S. 129, 135 (2009).

Although Garcia-Mojica objected in the district court to the reasonableness of the sentence, he has not shown that the variance reflected an abuse of discretion on the part of the district court and, thus, he has not demonstrated that the sentence is substantively unreasonable. *See Gall*, 552 U.S. at 51; *Rita v. United States*, 551 U.S. 338, 356 (2007).

AFFIRMED.