

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

United States Court of Appeals
Fifth Circuit

FILED

July 20, 2018

Lyle W. Cayce
Clerk

No. 17-11138
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE VILLANUEVA-CARDENAS,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-386-1

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Jose Villanueva-Cardenas appeals his eight-month prison sentence following the revocation of the supervised release term imposed as part of his 2015 sentence for illegal reentry. Villanueva-Cardenas argues that the district court proceedings violated Federal Rule of Criminal Procedure 32.1(a)(1) because he was held in custody for violating his supervised release yet was not promptly taken before a magistrate judge. As the parties agree, because

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Villanueva-Cardenas failed to raise this issue in the district court, it is subject to plain error review. *See United States v. Peltier*, 505 F.3d 389, 391 (5th Cir. 2007).

Villanueva-Cardenas has failed to show that it is clear or obvious that he was in custody for violating his supervised release during the 40 days in question. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). In any event, Villanueva-Cardenas has likewise failed to show that any alleged error, even if plain, affected his substantial rights. *See id.* The record shows that the district court reduced his consecutive prison sentence for his new illegal reentry offense to reflect credit for the 40 days at issue. The judgment of the district court is AFFIRMED.