

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

No. 17-40339
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 14, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GERARDO OMAR FRANCO-DE LA CRUZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:16-CR-418-1

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Gerardo Omar Franco-De La Cruz appeals the 58-month sentence imposed on his guilty plea conviction of possession with intent to distribute marijuana. Because Franco-De La Cruz did not alert the district court to the specific issues he now raises on appeal, we review for plain error. *See United States v. Neal*, 578 F.3d 270, 272 (5th Cir. 2009).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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First, Franco-De La Cruz argues that the district court improperly limited the extent of his downward departure by considering improper factors. *See United States v. Desselle*, 450 F.3d 179, 182 (5th Cir. 2006). If we assume without deciding that the district court’s comments at sentencing reflect a clear or obvious error, we nonetheless conclude that Franco-De La Cruz has not shown that the error affected his substantial rights. *See United States v. Escalante-Reyes*, 689 F.3d 415, 424 (5th Cir. 2012) (en banc); *United States v. Malone*, 828 F.3d 331, 341 (5th Cir.), *cert. denied*, 137 S. Ct. 526 (2016) (finding harmless error where the district court merely “muddled the steps” in formulating the sentence).

Second, Franco-De La Cruz disagrees with how the district court balanced the pertinent § 3553(a) sentencing factors. We perceive no reversible error. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *Malone*, 828 F.3d at 342 & n.41.

AFFIRMED.