

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 28, 2008*
Decided April 28, 2008

Before

FRANK H. EASTERBROOK, *Chief Judge*

MICHAEL S. KANNE, *Circuit Judge*

JOHN DANIEL TINDER, *Circuit Judge*

No. 06-4094

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

AGUSTIN TENORIO-TAPIA, also known as
MAURO AGUSTIN TENORIO-TAPIA,
Defendant-Appellant.

Appeal from the United
States District Court for the
Southern District of Illinois.

No. 06 CR 40017
J. Phil Gilbert, *Judge.*

Order

Agustin Tenorio-Tapia pleaded guilty to reentering the United States without permission, following his removal, in violation of 8 U.S.C. §1326. He contends on appeal that his sentence of 41 months' imprisonment is excessive because the district court miscalculated his offense level.

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. See Fed. R. App. P. 34(a); Cir. R. 34(f).

As part of a plea agreement, Tenorio-Tapia waived the right to appeal his sentence unless “the sentence imposed is in excess of the Sentencing Guidelines (as determined by the Court (or any applicable statutory minimum [sic], whichever is greater)”. In exchange for this concession the prosecutor asked the district judge to give Tenorio-Tapia a sentence at the low end of the range, which the judge did. (The range calculated by the presentence report, which was adopted by the district judge, is 41 to 51 months.)

Tenorio-Tapia’s brief on appeal ignores his waiver. The United States filed a brief invoking the waiver and asking us to dismiss the appeal. Tenorio-Tapia did not file a reply brief, and we cannot see how the appeal can be reconciled with the waiver. Accordingly, the appeal is dismissed on the basis of Tenorio-Tapia's waiver.