

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4526

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ALVARO HENRIQUEZ,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:06-cr-00516-JCC)

Submitted: June 9, 2008

Decided: July 14, 2008

Before NIEMEYER, MOTZ, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael S. Nachmanoff, Federal Public Defender, Frances H. Pratt, Assistant Federal Public Defender, Alexandria, Virginia, for Appellant. Chuck Rosenberg, United States Attorney, Harold W. Chun, Special Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jose Alvaro Henriquez pled guilty to unauthorized reentry of a removed alien whose removal was subsequent to a conviction for commission of an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b)(2) (2000). The district court properly calculated Henriquez's advisory Sentencing Guidelines range as 70-87 months of imprisonment, and sentenced him to 70 months' imprisonment. Henriquez timely appeals, alleging that the district court's sentence is procedurally and substantively unreasonable. For the reasons that follow, we affirm.

After United States v. Booker, 543 U.S. 220 (2005), we review a sentence to determine whether it is unreasonable, applying a "deferential abuse-of-discretion standard." Gall v. United States, 128 S. Ct. 586, 591 (2007). A district court must engage in a multi-step process at sentencing. First, the sentencing court must calculate the appropriate Sentencing Guidelines range by making any necessary factual findings. United States v. Moreland, 437 F.3d 424, 432 (4th Cir. 2006). Then the court should afford the parties "an opportunity to argue for whatever sentence they deem appropriate." Gall, 128 S. Ct. at 596-97. Next, it should consider the resulting advisory sentencing range in conjunction with the factors set out in 18 U.S.C. § 3553(a) (2000), and determine whether the § 3553(a) factors support the sentence requested by either party. Id. Considering the factors in

§ 3553(a) does not require the sentencing court to “robotically tick through” every subsection of § 3553(a). United States v. Montes-Pineda, 445 F.3d 375, 380 (4th Cir. 2006), cert. denied, 127 S. Ct. 3044 (2007).

To determine whether a sentencing court abused its discretion, we undertake a two-part analysis. United States v. Pauley, 511 F.3d 468 (4th Cir. 2007). First, we examine the sentence for “significant procedural errors,” and second, we evaluate the substance of the sentence. Id. at 473. Significant procedural errors include “failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence.” Id. (quoting Gall, 128 S. Ct. at 597). “Substantive reasonableness review entails taking into account the ‘totality of the circumstances, including the extent of any variance from the Guidelines range.’” Id. (quoting Gall, 128 S. Ct. at 597). While an appellate court may presume a sentence within the Guidelines range to be reasonable, it may not presume a sentence outside the range to be unreasonable. Id.

Here, the district court followed the necessary steps in sentencing Henriquez, and we find no abuse of discretion in its decision to sentence Henriquez at the bottom of the Guidelines range. Accordingly, we affirm the district court’s judgment. We

dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED