

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 13-14191
Non-Argument Calendar

D.C. Docket No. 4:13-cr-00023-HLM-WEJ-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID BERMUDEZ-TAPIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(July 16, 2014)

Before TJOFLAT, JORDAN and BLACK, Circuit Judges.

PER CURIAM:

David Bermudez-Tapia, having pleaded guilty to illegal reentry into the United States in violation of 8 U.S.C. § 1326(a) and (b)(2), appeals his sentence of

42 months' imprisonment. Although the district court varied downward and imposed a sentence four months below the low end of the applicable guideline range, Bermudez-Tapia argues his sentence is substantively unreasonable. Upon review,¹ we reject Bermudez-Tapia's contention and affirm his sentence.

Bermudez-Tapia has failed to demonstrate any "clear error of judgment" that would warrant a determination that the district court abused its discretion. *United States v. Irej*, 612 F.3d 1160, 1166 (11th Cir. 2010) (en banc). That Bermudez-Tapia's sentence did not exceed the guideline range and in fact fell below it is an indication that his sentence was reasonable, *see United States v. Hunt*, 526 F.3d 739, 746 (11th Cir. 2008), as is the fact that his sentence fell well below the statutory maximum, *see United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008). Bermudez-Tapia urges us to question the weight the district court assigned to his sole prior conviction, but such a determination falls within the district court's discretion, and we will not substitute our own judgment for that of the district court. *See United States v. Amedeo*, 487 F.3d 823, 832 (11th Cir. 2007). The record demonstrates that the district court carefully considered the circumstances of Bermudez-Tapia's offense and Bermudez-Tapia's own characteristics, including his youth at the time of his prior conviction. There is no indication the district

¹ We review the reasonableness of a sentence under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 41 (2007). The party challenging a sentence bears the burden to establish that it is unreasonable. *United States v. Pugh*, 515 F.3d 1179, 1189 (11th Cir. 2008).

court made a clear error of judgment in fashioning Bermudez-Tapia's sentence. Accordingly, we have no basis on which to find the sentence substantively unreasonable. *See Irey*, 612 F.3d at 1166.

AFFIRMED.