

July 3, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-41056  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BENJAMIN LAZARO-BELTRAN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:05-CR-1177-ALL  
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Before DAVIS, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Benjamin Lazaro-Beltran (Lazaro) appeals the 24-month sentence he received following his guilty-plea conviction for possessing with the intent to distribute more than 50 kilograms of marijuana, in violation of 21 U.S.C. § 841(a). He challenges the presumption of reasonableness that attaches to a sentence imposed within a properly calculated guidelines range, relying on the Supreme Court's grant of certiorari in Rita v. United States, 127 S. Ct. 551 (2006). After the parties filed their briefs in the instant case, the Supreme Court issued its decision, holding

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

that a court of appeals may apply a presumption of reasonableness to a properly calculated guideline sentence. Rita v. United States, \_\_ S.Ct. \_\_, 2007 WL 1772146 (2007). Accord United States v. Alonzo, 435 F.3d 551, 554 (5th Cir. 2006) (applying presumption of reasonableness to properly calculated guideline sentence).

Lazaro's sentence is within a properly calculated advisory guideline range and entitled to great deference. See United States v. Mares, 402 F.3d 511, 520 (5th Cir. 2005). Giving such deference to Lazaro's sentence, we conclude that Lazaro has failed to rebut the presumption that his sentence is reasonable. Alonzo, 435 F.3d at 554. The judgment of the district court is AFFIRMED.