

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

United States Court of Appeals  
Fifth Circuit

**FILED**

July 17, 2015

Lyle W. Cayce  
Clerk

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No. 14-51120  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS MANUEL GARCIA-MONGE, also known as Jesus M. Garcia,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:14-CR-788-1

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Before PRADO, OWEN, and GRAVES, Circuit Judges.

PER CURIAM:\*

Jesus Manuel Garcia-Monge was convicted of illegal reentry and received a within-guidelines sentence of 41 months of imprisonment followed by a three-year term of supervised release. On appeal, Garcia-Monge challenges the procedural reasonableness of his sentence based on the district court's reliance on an allegedly incorrect fact. Because Garcia-Monge's request for a variance did not preserve the error he now complains of, our review is for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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plain error. *See United States v. Neal*, 578 F.3d 270, 272 (5th Cir. 2009); *United States v. Peltier*, 505 F.3d 389, 391-92 (5th Cir. 2007). To succeed on plain error review, Garcia-Monge must show a forfeited error that is clear or obvious and affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing, we have the discretion to correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See id.*

Because the question of whether the district court misstated the status of Garcia-Monge's state sentence presented a factual issue which could have been resolved by the district court upon proper objection at sentencing, it cannot constitute plain error. *See United States v. Claiborne*, 676 F.3d 434, 438 (5th Cir. 2012). Even if it could, and even assuming Garcia-Monge has demonstrated a forfeited error that was clear or obvious, *see United States v. Kirklin*, 701 F.3d 177, 178-80 (5th Cir. 2012), he has not demonstrated that the error affected his substantial rights or that we should exercise our discretion to correct the error, *see Puckett*, 556 U.S. at 135.

AFFIRMED.