

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-40813  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SERGIO ARTURO MARIN-AVILA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-98-CR-132-1  
- - - - -

April 15, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Sergio Arturo Marin-Avila appeals his guilty-plea conviction for being found unlawfully in the United States after having been previously convicted of an aggravated felony and deported in violation of 8 U.S.C. § 1326(b)(2). He argues that his guilty plea was not intelligently and voluntarily given because the district court did not advise him that the United States Sentencing Guidelines were applicable and that the district court had the authority to depart above or below the Guidelines; he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

argues that these variances from the procedures set forth in Fed. R. Crim. P. 11 affected his substantial rights. While the district court failed to advise Marin-Avila of the applicability of the Guidelines and its authority to depart from the Guideline range, Marin-Avila has not shown that the district court's variance from Rule 11 was "a material factor affecting [his] decision to plead guilty." See United States v. Johnson, 1 F.3d 296, 302 (5th Cir. 1993)(en banc).

AFFIRMED.