

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

March 20, 2006

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

No. 04-1268

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JESSE MARTINEZ,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division

No. 02 CR 80

Harry D. Leinenweber,
Judge.

O R D E R

We remanded this case under *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005), in order to ask the district judge whether he would have imposed a lesser sentence on Jesse Martinez had he known at the time of sentencing that the federal sentencing guidelines are advisory rather than mandatory. *See United States v. Booker*, 543 U.S. 220 (2005). The district judge has advised us that he would not have deviated from the chosen sentence. We invited both parties to comment on the reasonableness of the sentence in light of the district court's response, and only the government has done so. We now affirm.

Martinez pleaded guilty to distributing crack cocaine in violation of 21 U.S.C. § 841(a)(1). The district court imposed a sentence of 188 months, the bottom of the range of 188-235 months, which was calculated based on adjustments for Martinez's status as a career offender, *see* U.S.S.G. § 4B1.1(b), and his acceptance of

responsibility, *see* U.S.S.G. § 3E1.1. Martinez did not challenge the calculation of the guideline range, so we accept it as properly calculated and therefore presumptively reasonable. *See United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005). Having declined to respond to our invitation to comment on the reasonableness of the sentence, Martinez has not rebutted that presumption by establishing that the sentencing is unreasonable when measured against the factors set forth in 18 U.S.C. § 3553(a). *See id.* The district court opined that no lesser sentence would be appropriate given Martinez's criminal history and the severity of his offense. Martinez has not undermined the reasonableness of that conclusion, and accordingly, we AFFIRM the judgment of the district court.