

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-1339

United States of America,

Appellee,

v.

Serafin Lopez-Flores, also known as
Antonio Lopez,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: September 13, 2005

Filed: September 21, 2005

Before LOKEN, Chief Judge, WOLLMAN and BYE, Circuit Judges.

PER CURIAM.

Serafin Lopez-Flores appeals the sentence imposed by the district court¹ upon him claiming error for overstating his criminal history. He also contends the district court impermissibly relied upon the Sentencing Guidelines and the ultimate sentence was higher than necessary to achieve the sentencing purposes of 18 U.S.C. § 3553(a) (West 2005).

¹The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

Lopez-Flores agreed with the district court's assessment of his criminal history category under the Guidelines, but asked for a downward departure from that category. (See Tr. at 5.) The district court was aware of its authority to depart from the Guidelines. (Id. at 7-9, 17.) There being no unconstitutional motive for the lack of departure alleged, the district court's failure to depart is not reviewable. United States v. Gonzalez-Lopez, 335 F.3d 793, 799 (8th Cir. 2003).

Lopez-Flores argues the district court impermissibly relied upon the Sentencing Guidelines in violation of United States v. Booker, 125 S. Ct. 738 (2005). However, the district court made clear it recognized the advisory nature of the Sentencing Guidelines and considered the factors enumerated in 18 U.S.C. § 3553(a). (Tr. at 19.) Accordingly, the district court committed no Booker error.

In light of the offense level, criminal history category, nature and circumstances of the offense, history of Lopez-Flores, and the other factors enumerated in § 3553(a) and United States v. Adams, 401 F.3d 886, 895 (8th Cir. 2005), this Court concludes the sentence imposed by the district court is in all aspects reasonable.

We therefore affirm the district court.
