

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

No. 18-20400
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 2, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JEFFREY RANDLE,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CR-73-1

Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Jeffrey Randle appeals his within-guidelines sentence of 40 months of imprisonment, to be followed by three years of supervised release, for two counts of possession of a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1). He challenges his sentence as substantively unreasonable on the ground that his criminal history category overstated the seriousness of his past criminal conduct. As Randle acknowledges, his challenge is subject to

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 review. *See United States v. Peltier*, 505 F.3d 389, 391-92 (5th Cir. 2007). Despite Randle's arguments, he has not overcome the presumption of substantive reasonableness that applies to his within-guidelines sentence. *See United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009). In addition, while Randle argues that the district court should have granted a downward departure pursuant to U.S.S.G. § 4A1.3(b)(1), p.s., based on over-represented criminal history, there is no indication that the district court mistakenly believed that it lacked the authority to depart. *See United States v. Jefferson*, 751 F.3d 314, 322-23 (5th Cir. 2014).

AFFIRMED.