

December 6, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10720
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CLINTON JENNINGS, also known as Blacc Gato, also known as
Gato,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:03-CR-228-3

Before REAVLEY, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Clinton Jennings raises arguments that are foreclosed by United States v. Burns, 433 F.3d 442, 450-51 (5th Cir. 2005), which held that an otherwise valid appeal waiver is not rendered invalid, or inapplicable to an appeal seeking to raise an error pursuant to United States v. Booker, 543 U.S. 220 (2005), merely because the waiver was made before Booker. Jennings also raises arguments that are foreclosed by United States v. Austin, 432 F.3d 598,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

599-600 (5th Cir. 2005), which held that the application of Booker's remedial opinion to a sentencing hearing where the underlying offense was committed pre-Booker does not violate constitutional due process or ex post facto requirements. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.