

United States Court of Appeals

Fifth Circuit

FILED

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

July 13, 2006

Charles R. Fulbruge III
ClerkNo. 05-10917
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KRAIG STEPHENS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:04-CR-160-ALL

Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Kraig Stephens raises arguments that are foreclosed by United States v. Cortez, 413 F.3d 502, 503 (5th Cir.), cert. denied, 126 S. Ct. 502 (2005), which held that the defendant's appeal waiver barred a claim that the sentence exceeded the statutory maximum as that term was defined in Blakely v. Washington, 542 U.S. 296 (2004), and by United States v. Scroggins, 411 F.3d 572, 575-76 (5th Cir. 2005), which held that the Due Process Clause does not bar the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

application of Justice Breyer's remedy opinion in United States v. Booker, 543 U.S. 220 (2005), when resentencing defendants in light of Booker. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.