

United States Court of Appeals

Fifth Circuit

FILED

May 2, 2007

Charles R. Fulbruge III
ClerkIN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-41551
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOEL ERNESTO VALDES, also known as Julio Nestor,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:06-CR-580-ALL

Before HIGGINBOTHAM, WIENER, and PRADO, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Joel Ernesto Valdes preserves for further review his contention that his sentence is unreasonable because this court's post-Booker** rulings have effectively reinstated the mandatory Sentencing Guideline regime condemned in Booker. Valdes concedes that his argument is foreclosed by United States v. Mares, 402 F.3d 511 (5th Cir.), cert. denied, 126 S. Ct. 43 (2005), and its progeny, which have outlined this court's methodology for reviewing

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

** United States v. Booker, 543 U.S. 220 (2005).

sentences for reasonableness. Valdes also raises arguments that are foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.