

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

United States Court of Appeals
Fifth Circuit

FILED

August 14, 2012

No. 11-20419
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JOSEPH JOSE BENITEZ,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:09-CR-97-1

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before KING, JOLLY, and SMITH, Circuit Judges.

PER CURIAM:*

On January 4, 2012, we granted the Government's motion for summary affirmance, because we were bound by our precedent which held that the Fair Sentencing Act of 2010 (FSA) does not apply retroactively to a defendant who is

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 11-30366

sentenced after the effective date of the FSA but whose offense preceded the FSA's effective date. *United States v. Benitez*, 456 F. App'x 446 (5th Cir. 2012) (citing *United States v. Tickles*, 661 F.3d 212, 214-15 (5th Cir. 2011)).

After our opinion was issued, the Supreme Court held in *Dorsey v. United States*, 132 S. Ct. 2321 (2012), that the more lenient penalties of the FSA apply to offenders who committed offenses before the effective date of the FSA, but who were sentenced after that date. We therefore VACATE Benitez's sentence and REMAND this case for resentencing consistent with *Dorsey*.

VACATED and REMANDED.