

2 On February 9, 2005, Garcia-Torres filed a *habeas corpus* petition under 28 U.S.C. §
3 2255, seeking to vacate his jury trial conviction. Docket No. 1. The Court referred the petition
4 to a Magistrate Judge (Docket No. 8), who issued an R & R denying it (Docket No. 11). On
5 October 25, 2005, the Court adopted the R & R as unopposed and dismissed Garcia-Torres’
6 petition. Dockets No. 12-13. Two weeks later, Garcia-Torres filed a motion for reconsideration,
7 moving the Court to set aside its order dismissing the case because the R & R had not been sent
8 to him. Docket No. 15. The Court granted Garcia-Torres’ motion and reopened the case. Docket
9 No. 18.

10 In his § 2255 petition, Garcia-Torres argues that the Court erred in (1) imposing the
11 statutory maximum sentence without making a specific finding that he was accountable for a
12 particular quantity or kind of drug (Docket No. 1-2, at p. 8); (2) sentencing him in violation of
13 the rule established in Blakely v. Washington, 542 U.S. 296 (2004) (Id. at p. 11); and (3) failing
14 to make specific findings as to the amount of drugs attributable to him (Id. at p. 20). The R &
15 R addressed and rejected each of these arguments. Docket No. 11.

16 As to Garcia-Torres’ first argument, the R & R established that the statute under which
17 Garcia-Torres was sentenced did not require a specific verdict as to quantity and kind of drug.
18 Concerning the second argument, the R & R stated that Blakely was inapplicable to the case

19 several of her associates-including Manuel Pérez-Colón (“Pérez-Colón”) and
20 appellants Andrés García-Torres (“Andrés”) and Deri Ventura-García
21 (“Ventura”)-to recover the drugs from the ocean. The drugs would then be stored
22 by members of Ayala's organization and “decked” (i.e., prepared for distribution)
23 by Ayala's confederates-including appellants Walter Batíz-Rivera (“Batíz”),
24 Ventura, Andrés, and Andrés's brother, appellant Angel Manuel García-Torres
25 (“Manuel”). The drugs were then distributed by these persons and others to places
26 Puerto Rico and elsewhere in the United States.

Id. at 64. Multiple murders and acts of violence occurred as part of the conspiracy. Id.; see also
United States v. Garcia-Torres, 280 F.3d 1 (1st Cir. 2002); United States v. Martinez-Medina, 279
F.3d 105 (1st Cir. 2002).

2 “because no facts found by a preponderance of the evidence were used to impose a sentence
3 exceeding the statutory maximum....” Id. at 13.² Finally, the R & R rejected Garcia-Torres’
4 third argument, stating that under United States v. Vega, 398 F.3d 149, 151 (1st Cir. 2005) a
5 jury is allowed to make a finding as to drug quantities attributable to a conspiracy as a whole,
6 and the district court is allowed to make individualized determinations base on the
7 preponderance of the evidence as to each co-conspirator for sentencing purposes. Id. at 13-14.

8 Garcia-Torres’ objections followed. Docket No. 20. There, he claims that the R & R
9 failed to consider U.S. v. Booker, 543 U.S. 220 (2005), and argues, for the first time, that his
10 lawyer was ineffective at trial as well as on appeal for not contesting the Court’s reliance on the
11 2001 federal sentencing guidelines, rather than those applicable in 1998 when the crimes
12 occurred. Id. at pgs 4-9.

13 **Standard of Review**

14 *Objections to R & R*

15 An adversely affected party may contest a magistrate’s report and recommendation
16 through written objections. Santiago v. GMD Airline Servs., Inc., 681 F. Supp. 2d 120, 123
17 (D.P.R. 2010) (citing Local Rule 72(b) &72(d)). The court shall then make a *de novo*
18 determination of those portions of the report to which objections are filed. Id. In so doing, the
19 court may accept, reject, or modify, in whole or in part, the findings or recommendations made
20 by the magistrate. Id.; see also 28 U.S.C. § 636(b)(1). Since Garcia-Torres filed an opposition
21 to the R & R, the Court will review *de novo* those portions which he opposed.

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25 ² The R & R also noted that Garcia-Torres’ first two arguments were procedurally barred
26 because he had failed to raise them on appeal, and that he had also failed to establish the cause
for this failure or the prejudice it caused him. Id. at pgs. 5-8.

2 **Analysis and Conclusion**

3 Upon *de novo* review, the Court finds no merits on Garcia-Torres' § 2255 petition or on
4 his objections to the R & R. As the R & R correctly states, Garcia-Torres' first claim is based
5 on Apprendi v. New Jersey, 530 U.S. 466, 490 (2000), which requires that "[o]ther than the
6 fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed
7 statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." In this
8 case, however, Apprendi is inapplicable because Garcia-Torres' sentences for counts I and II
9 fell within statutory maximums. See, respectively, 21 U.S.C. § 841 (b)(1)(C) and 18 U.S.C. §
10 1956(a)(1). The same holds true as to Garcia-Torres' Blakely argument, since a sentence
11 exceeding the statutory maximum is also necessary for this case's ruling to come into play. 542
12 U.S. at 304-05. Finally, the Court notes that the R & R's rejection of Garcia-Torres' third
13 argument is based on a well-settled legal rule. See e.g., Vega, 398 F.3d 151; Derman v. United
14 States, 298 F.3d 34, 43 (1st Cir. 2002) ("the government need only allege and prove to the jury
15 the bare facts necessary to increase the statutory sentencing maximum for the conspiracy as a
16 whole...."); United States v. Bradley, 917 F.2d 601, 604 (explaining that "quantities and types
17 of drugs not specified in the count of conviction are to be included in determining the offense
18 level if they were part" of a conspiracy).

19 Garcia-Torres' objections to the R & R also lack merits. Booker postdates this Court's
20 sentencing by at least four years and its affirmance by almost a year; thus, it is inapplicable to
21 the case. In any event, Booker applies when sentencing guidelines are treated as *mandatory*
22 to increase the applicable sentencing range. Booker, 543 U.S. 243-44. In this case, Garcia-
23 Torres was sentenced to 40 years of imprisonment for both counts, even though the federal
24 guidelines provided for a range of life imprisonment for each. See Docket No. 20, p. 3.
25 Therefore, Booker is also inapplicable because, in imposing sentences lower than those
26 mandated by the federal guidelines, the Court treated the guidelines as advisory. Lastly, as the
R & R states, Garcia-Torres' lawyer raised many objections to the Court's sentencing, but the

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Court denied them all. Docket No. 11, p. 13. Accordingly, Garcia-Torres cannot blame his fortunes on his lawyer.

In sum, the R & R presented a thorough, well-reasoned and well-supported analysis of Garcia-Torres' claims, and this Court fully concurs with such analysis. Accordingly, the Court **ADOPTS** the R & R and **DENIES** Garcia-Torres' § 2255 petition.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 23rd day of March, 2011.

s/ Salvador E. Casellas
SALVADOR E. CASELLAS
U.S. Senior District Judge