

December 12, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40636
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RIGOBERTO JAIMES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-56-ALL

Before HIGGINBOTHAM, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Rigoberto Jaimes appeals his conviction and sentence for possession with intent to distribute more than five kilograms of cocaine. See 21 U.S.C. § 841. He argues that in light of the Supreme Court's recent decision in United States v. Booker, 125 S. Ct. 738 (2005), the district court erred in sentencing him under the then-mandatory Sentencing Guidelines. Jaimes has not shown, and the record does not support the contention, that had the guidelines been advisory, the court would have imposed a lesser

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sentence. See e.g., United States v. Valenzuela-Quevedo, 407 F.3d 728, 733 (5th Cir. 2005), petition for cert. filed (July 25, 2005)(No. 05-5556); United States v. Martinez-Lugo, 411 F.3d 597, 601 (5th Cir. 2005). Thus, he has failed to show plain error in his sentence. See United States v. Mares, 402 F.3d 511, 520 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005) (No. 04-9517).

AFFIRMED.