

April 27, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20523
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH HAROLD HARRINGTON,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-707-ALL

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before REAVLEY, JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

The Supreme Court has vacated our previous judgment and remanded the case for further consideration in light of United States v. Booker, 583 U.S. ____ (2005). In the appellant's brief he did claim that the sentence above the guideline range would be forbidden by the Supreme Court when it decided Blakely v. Washington, because his waiver should be treated as allowing appeal if the guideline range was exceeded.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We reject the argument that the waiver allowed an appeal of a sentence below the statutory maximum because it exceeded the guideline range. The plea agreement expressly named the statutory maximum as what he accepted.

Having bound himself to the sentence without appeal, we would hold no plain error if we were to accord Harrington jurisdiction to appeal. However, we see the appeal as we did before: barred by the waiver.

APPEAL DISMISSED.