

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

September 28, 2006

Charles R. Fulbruge III
Clerk

No. 03-51000

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JACQUELINE O. RICHARDSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(01-CR-233)

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

In our previous opinion in this case, we affirmed Defendant-Appellant Richardson's conviction and sentence. See United States v. Richardson, No. 03-40045, 117 Fed. Appx. 931 (5th Cir. 2004) (unpublished). Following judgment, Richardson filed a petition for certiorari. The Supreme Court granted Richardson's petition for certiorari, vacated our judgment, and remanded the

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

case to this court for further consideration in light of United States v. Booker, 543 U.S. 220 (2005). We now reconsider the matter and decide to reinstate our previous judgment affirming Richardson's conviction and sentence.

Following the Supreme Court's decision in Booker, we requested supplemental briefing from the parties regarding their position in light of the Supreme Court's decision. In response, Richardson's counsel filed a motion to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967). The motion asserts that no non-frivolous argument can be raised because Richardson's Booker-related issue was raised for the first time on direct appeal and the record will not support a finding of plain-error. Our independent review of the record leads us to conclude that counsel is correct. Because Richardson did not raise a Booker objection in the trial court, her Booker claim would fail under the plain-error test discussed in United States v. Mares, 402 F.3d 511, 520-22 (5th Cir. 2005). There is no indication that the district court would have imposed a lesser sentence had the Guidelines been advisory. See United States v. Bringier, 405 F.3d 310, 317-18 (5th Cir. 2005).

Therefore, considering the briefs of counsel, the response of Appellant Richardson, and our own independent review of the record in light of Booker, we grant counsel's motion to withdraw and dismiss the appeal as frivolous. Our prior disposition

remains in effect, and we REINSTATE OUR EARLIER JUDGMENT affirming Richardson's conviction and sentence.