

September 20, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-10332  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DARIN HEATH WEST,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(03-CR-46)  
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**ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES**

Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM: \*

The Supreme Court granted Appellant West's petition for writ of certiorari, vacated our judgment in this case, and remanded it to us for further consideration in light of *United States v. Booker*, 125 S. Ct. 738 (2005). Previously, we affirmed West's conviction and sentence. See *United States v. West*, 114 Fed.

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Appx. 159 (5th Cir. 2004), *vacated by* 125 S. Ct. 1867 (2005). Following our judgment, West filed a petition for certiorari, challenging for the first time the constitutionality of the federal Sentencing Guidelines as applied in his case. After reconsidering our decision in light of *Booker*, we reinstate our prior judgment affirming West's conviction and sentence.

We will not consider arguments raised for the first time in a petition for certiorari absent extraordinary circumstances. See *United States v. Taylor*, 409 F.3d 675, 676 (5th Cir 2005). Since West's case features none, we will not consider his *Booker* arguments.

Alternatively, we note that West concedes in his certiorari petition that he did not preserve the *Booker* error at trial. Thus, even if we were to consider his *Booker*-based argument, we would still deny relief as West could not survive the plain error review mandated by *United States v. Mares*, 402 F.3d 511, 520 (5th Cir. 2005).

Accordingly, we reinstate our judgment affirming West's conviction and sentence.