

April 11, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-11465
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT HEWITT JONES,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:04-CR-153-ALL

Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Robert Hewitt Jones appeals his sentence following his guilty plea conviction for theft or receipt of stolen mail matter in violation of 18 U.S.C. § 1708. He contends that he was sentenced in contravention of United States v. Booker, 543 U.S. 220 (2005).

Jones's plea agreement contained an express waiver of his right to appeal his sentence and he retained only the "rights (a) to bring a direct appeal of (i) a sentence exceeding the statutory maximum punishment, (ii) an upward departure from 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

guideline range deemed applicable by the district court, or (iii) an arithmetic error at sentencing, and (b) a claim of ineffective assistance of counsel.” The Government seeks to enforce the waiver. Our review of the record indicates that the waiver was knowing and voluntary and that under its plain language, it bars Jones’s Booker arguments. See United States v. Bond, 414 F.3d 542, 545-46 (5th Cir. 2005). The waiver is not invalid merely because it was made before Booker. See United States v. Burns, 433 F.3d 442, 450-51 (5th Cir. 2005).

AFFIRMED.