

June 22, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-30966
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL N. BERARD, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:04-CR-20049-1

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Michael N. Berard, Jr., appeals the 57-month sentence imposed by the district court following his guilty-plea conviction for possession of a firearm by a convicted felon. Berard argues, pursuant to United States v. Booker, 125 S. Ct. 738 (2005), that he is entitled to resentencing because the district court erred in sentencing him under a mandatory application of the Sentencing Guidelines.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Berard did not raise an argument regarding the mandatory application of the Sentencing Guidelines in the district court, it is reviewed only for plain error. See United States v. Valenzuela-Quevedo, 407 F.3d 728, 732 (5th Cir. 2005); see also United States v. Malveaux, ___F.3d___, No. 03-41618, 2005 WL 1320362 at *1 n.9 (5th Cir. Apr. 11, 2005). “[Berard] has not shown, with a probability sufficient to undermine confidence in the outcome, that if the judge had sentenced him under an advisory sentencing regime rather than a mandatory one, he would have received a lesser sentence.” United States v. Infante, 404 F.3d 376, 395 (5th Cir. 2005). Because Berard has not satisfied his burden of establishing plain error, he is not entitled to relief. See id.

AFFIRMED.