

FILED

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40446
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER GARCIA-VARGAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:03-CR-412-1

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Javier Garcia-Vargas pleaded guilty to unlawful possession of an unregistered firearm and was sentenced to 30 months of imprisonment and two years of supervised release. Garcia-Vargas asserts that the Supreme Court's holding in Blakely v. Washington, 124 S. Ct. 2531 (2004), should be applied to sentences determined under the federal sentencing guidelines. As Garcia-Vargas concedes, this argument is foreclosed by this court's recent opinion in United States v. Pineiro, 377 F.3d 464,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

473 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263), but he raises it to preserve it for possible further review.

AFFIRMED.