

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40696
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRYAN GENE BERRYMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:03-CR-143-ALL-MAC

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

PER CURIAM:*

Bryan Gene Berryman pleaded guilty pursuant to a written plea agreement to receipt of child pornography. He was sentenced to 57 months of imprisonment, three years of supervised release, and a \$100 special assessment.

Berryman argues for the first time on appeal that the district court erred in enhancing his sentence based on facts that were not found by a jury or admitted by Berryman. He contends that, in light of the Supreme Court's decision in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Blakely v. Washington, 124 S. Ct. 2531 (2004), such enhancements violate the Fifth and Sixth Amendments. As Berryman acknowledges, this issue is foreclosed. See United States v. Pineiro, 377 F.3d 464, 473 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263).

AFFIRMED.