

November 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41514
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HECTOR MANUEL VILLA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:04-CR-273-1

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Hector Manuel Villa appeals from his sentence imposed following his guilty plea to possession with intent to distribute more than 1,000 kilograms of marijuana. Villa contends that he was sentenced in violation of United States v. Booker, 125 S. Ct. 738 (2005), when his sentence was enhanced for possession of a dangerous weapon and his role in the offense. Villa also contends that his sentence is unconstitutional because he was sentenced pursuant to the mandatory Sentencing Guidelines regime.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court, however, opined that if the Guidelines were held unconstitutional, it would impose the same sentence. Therefore, the Government has carried its burden of establishing that the sentencing errors suffered by Villa were harmless beyond a reasonable doubt. See United States v. Walters, 418 F.3d 461, 464 (5th Cir. 2005); United States v. Akpan, 407 F.3d 360, 376 (5th Cir. 2005); see also United States v. Martinez-Lugo, 411 F.3d 597, 601 (5th Cir. 2005), cert. denied, ___ S. Ct. ___ (Oct. 11, 2005) (No. 05-6242).

AFFIRMED.