

**FILED**

November 17, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-51266  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SYDNEY CHARLES RHODES, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:04-CR-194-ALL  
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Before JONES, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Sydney Charles Rhodes, Jr., appeals the sentences imposed following his guilty-plea conviction on two counts of transporting aliens within the United States for profit. Citing United States v. Booker, 125 S. Ct. 738 (2005), Rhodes argues that the district court violated his Sixth Amendment right to a jury trial by enhancing his sentence under the United States Sentencing Guidelines based on facts that were neither admitted by him nor found by a jury beyond a reasonable doubt. Rhodes

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

also argues that the district court erred by sentencing him pursuant to the mandatory Sentencing Guidelines scheme held unconstitutional in Booker.

At Rhodes's sentencing hearing, the district court noted that if the United States Sentencing Guidelines were held unconstitutional it would impose the same concurrent 33-month terms of imprisonment it had previously imposed. Therefore, the Government has carried its burden of establishing that the district court's sentencing errors were harmless beyond a reasonable doubt. United States v. Walters, 418 F.3d 461, 464 (5th Cir. 2005); United States v. Akpan, 407 F.3d 360, 376 (5th Cir. 2005).

The judgment of the district court is AFFIRMED.