

August 15, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-51321

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HOOVER ELIVER CAPACHO-PINTO

Defendant - Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
(04-CR-360)  
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Before SMITH, GARZA, and PRADO, Circuit Judges.

PER CURIAM:\*

IT IS ORDERED that appellee's unopposed motion to vacate sentence is granted.

IT IS ORDERED that appellee's unopposed motion to remand case to the district court for resentencing in light of the U.S. Supreme Court's recent opinion in US v. Booker and this Court's opinion in US v. Mares is granted.

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\* Pursuant to 5<sup>th</sup> Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>th</sup> Cir. R. 47.5.4.

IT IS ORDERED that appellee's unopposed alternative motion to extend time to file appellee's brief 14 days from the Court's denial of appellee's motion to vacate and remand is denied as moot.