

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

May 27, 2008

No. 06-31118
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

BERNIE CHRISTOPHER RAMIREZ

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:05-CR-20136-2

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES
Before JOLLY, BENAVIDES, and STEWART, Circuit Judges..

PER CURIAM:*

This court previously affirmed the sentence of the Appellant, Bernie Christopher Ramirez. *United States v. Ramirez*, 251 F. App'x 955 (5th Cir. 2007) (unpublished). The Supreme Court vacated and remanded the case for further consideration in the light of *Kimbrough v. United States*, 128 S.Ct. 558 (2007). *Ramirez v. United States*, 128 S.Ct. 1315 (2008).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Ramirez objected in the district court and on appeal to the disparate sentences under the Sentencing Guidelines for offenses involving cocaine base ("crack cocaine") and powder cocaine, and thus preserved the issue, he "is entitled to have his sentence set by a judge aware of the discretion that Kimbrough has announced." See *United States v. Burns*, ___ F.3d ___, 2008 WL 1914332, at *8 (5th Cir. May 2, 2008). Accordingly, Ramirez's sentence is VACATED, and the case is REMANDED to the district court so that it may analyze the 18 U.S.C. § 3553(a) factors in the light of Kimbrough. We express no opinion on a particular sentence and do not even suggest that the district court should impose a different sentence on remand. The district court, in its discretion, may combine the resentencing proceeding on remand with any proceedings that the court may determine are appropriate in the light of the recent amendments to the Sentencing Guidelines with respect to offenses involving crack cocaine. See *Burns*, 2008 WL 1914332, at *8.

VACATED and REMANDED.