

April 17, 2007

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40643

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALBERT PEREZ,

Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Texas, Victoria
No. 6:05-CR-00085

Before JONES, Chief Judge, and HIGGINBOTHAM and CLEMENT, Circuit
Judges.

PER CURIAM:*

After considering the briefs, oral arguments and pertinent parts of the record in this case, we remain uncertain about the district court's reasoning when it refused to credit Perez's federal sentence for the nine months he had served in state custody on an offense for which he had not at the date of sentencing been formally charged in state court. The court probably erred if it was trying to apply U.S.S.G. § 5G1.3(b); it overlooked U.S.S.G. § 5G1.3(c); and we cannot discern the legal

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

basis for its deferring the decision whether to award credit for the ongoing state imprisonment. We need not further analyze these issues, however, because Perez was recently sentenced on a guilty plea to serve a lengthy state imprisonment on the underlying state offenses. We therefore VACATE and REMAND the sentence with instructions to the district court to exercise its discretion, pursuant to the Guidelines and Booker, in light of the foregoing development, and to articulate the reasons for its decision.

VACATED AND REMANDED.