

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 11, 2007

---

No. 06-40994  
Conference Calendar

---

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ALLAN ROBERTO RIVERA-GARCIA

Defendant-Appellant

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:04-CR-1081-ALL

---

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:\*

Allan Roberto Rivera-Garcia was convicted of violating 8 U.S.C. § 1326 by being found in the United States without permission, following removal. He appeals the sentence imposed in his case following this court's remand for resentencing in light of *United States v. Booker*, 543 U.S. 220 (2005).

Rivera-Garcia challenges the constitutionality of § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

elements of the offense that must be found by a jury in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). A panel of this court rejected Rivera-Garcia's *Apprendi*-based argument in his initial appeal. *United States v. Rivera-Garcia*, 167 F. App'x 989, 989-90 (5th Cir.), cert. denied, 126 S. Ct. 2309 (2006). This court's previous decision stands as the law of the case. See *United States v. Becerra*, 155 F.3d 740, 752-53 (5th Cir. 1998).

Rivera-Garcia also contends that his sentence is unreasonable as a matter of law because it was imposed pursuant to a *de facto* mandatory sentencing scheme. He argues that post-*Booker* rulings issued by this court have effectively reinstated the mandatory sentencing system found unconstitutional in *Booker*. This court must follow its precedent addressing post-*Booker* sentencing unless an intervening *en banc* or Supreme Court decision renders the decisions inapplicable. See *In re Brown*, 457 F.3d 392, 395 n.1 (5th Cir. 2006). Rivera-Garcia has cited no such decision.

Rivera-Garcia's sentence, which falls within his properly calculated sentencing guideline range, is presumed reasonable. See *Rita v. United States*, 127 S. Ct. 2456, 2462-66 (2007); *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006). Giving "great deference" to that sentence, and recognizing that the sentencing court considered all the factors for a fair sentence under 18 U.S.C. § 3553(a), we conclude that Rivera-Garcia has failed to rebut the presumption that his sentence was reasonable. See *United States v. Nikonova*, 480 F.3d 371, 376 (5th Cir.), cert. denied, 128 S. Ct. 163 (2007).

AFFIRMED.