

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 25, 2007

No. 06-41291
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ARTURO MARTINEZ-CORPUS

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:06-CR-468-1

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Arturo Martinez-Corpus appeals from his conviction of illegal reentry following deportation. He argues that the presumption of reasonableness given to sentences within the advisory guideline sentencing range has unconstitutionally reinstated the mandatory guideline sentencing system struck down in *United States v. Booker*, 543 U.S. 220 (2005). This court's rebuttable presumption that sentences within the guideline sentencing range are

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

reasonable does not run afoul of Booker. See *Rita v. United States*, 127 S. Ct. 2456, 2462 (2007).

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Martinez-Corpus challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This court has held that this issue is "fully foreclosed from further debate." *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202).

AFFIRMED.