

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 5, 2012

No. 11-10287
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FRANKLIN GARCIA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:11-CR-15-1

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before GARZA, SOUTHWICK, and HAYNES, Circuit Judges.

PER CURIAM:*

This court affirmed the district court's consideration of Defendant Franklin Garcia's rehabilitative needs when imposing a term of imprisonment after revocation of Garcia's supervised release. We did so based on then-valid circuit precedent. *See United States v. Breland*, 647 F.3d 284 (5th Cir. 2011),

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 11-10287

vacated by 132 S. Ct. 1096 (Jan. 17, 2012). Consistent with its decision to vacate in *Breland*, the Supreme Court vacated and remanded the judgment in the present case, instructing that we reconsider in light of the Government's change in position as described in its brief to the Supreme Court. *Garcia v. United States*, No. 11-8728, 2012 WL 425216 (May 14, 2012).

In its Supreme Court brief, the Government stated that "in light of the disposition of the petition for certiorari in *Breland* and the position asserted by the Solicitor General in his brief for the United States filed in that case, this Court should, as in *Breland*, grant the petition, vacate the judgment, and remand to the court of appeals for further consideration." Brief for the United States, *Garcia v. United States*, 2012 WL 1743230, at *11 (April 11, 2012). The Government's position accords with how the First Circuit, Eighth Circuit, and the Ninth Circuit have resolved this issue. *United States v. Molignaro*, 649 F.3d 1, 5 (1st Cir. 2011); *United States v. Taylor*, 679 F.3d 1005, 1006-07 (8th Cir. 2012); *United States v. Grant*, 664 F.3d 276, 282 (9th Cir. 2011).

Accordingly, this matter is REMANDED to the district court for resentencing in accordance with this order.