

June 20, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-10185  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BOBBIE RAY LAMBETH,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:03-CR-422-2  
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Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Bobbie Ray Lambeth appeals the sentence he received after he pleaded guilty to mail fraud. The Government does not argue that Lambeth's appeal waiver precludes his appeal; it has, therefore, waived any such argument. See United States v. Lang, 440 F.3d 212, 213 (5th Cir. 2006).

Lambeth argues that his sentence must be vacated under United States v. Booker, 543 U.S. 220 (2005), because the district court's application of the Guidelines to determine the loss amount and its increase in his offense level for his role in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the offense resulted in a sentence that exceeded the sentence authorized by the facts which he admitted. Lambeth also argues that application of the remedial portion of Booker, whereby the district court increased his sentence based on facts not alleged in the indictment or admitted by him by a preponderance of the evidence, violated his due process rights. This court recently squarely rejected the arguments that Lambeth makes. See United States v. Johnson, 445 F.3d 793, 798 (5th Cir. 2006) (citing United States v. Mares, 402 F.3d 511, 518 (5th Cir.), cert. denied, 126 S. Ct. 43 (2005)).

Accordingly, Lambeth's sentence is AFFIRMED.