

November 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41753
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAIME CERVANTES-GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:04-CR-97-ALL

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Jaime Cervantes-Garcia appeals his sentence following his guilty plea for illegal reentry after deportation. He contends that he was sentenced in contravention of United States v. Booker, 125 S. Ct. 738 (2005).

Cervantes-Garcia's plea agreement contained an express waiver of his right to appeal on all grounds, except "(a) any punishment imposed in excess of the statutory maximum; (b) any upward departure from the guideline range deemed most applicable

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

by the sentencing court; (c) arithmetic errors in the guidelines calculations; and (d) a claim of ineffective assistance of counsel that affects the validity of the waiver itself." Our review of the record indicates that the waiver was knowing and voluntary and that under its plain language, it bars review of Cervantes-Garcia's Booker claim. See United States v. Bond, 414 F.3d 542, 545-46 (5th Cir. 2005). Cervantes-Garcia's appeal is therefore dismissed.

APPEAL DISMISSED.