

August 28, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-11175
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DERRICK DAMON RAINWATER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CR-42-1

Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Derrick Damon Rainwater, federal prisoner # 25805-077, appeals the judgment affirming in part and denying in part his motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and denying his motion to supplement the motion for reduction of sentence based on United States v. Booker, 543 U.S. 220 (2005). Rainwater's motion challenged the 1,128-month sentence he received for armed robbery and use of a firearm during a crime of violence. He argues that his sentence should

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

be reduced in light of Booker, and that the amended judgment is incorrect because the sentences imposed on the firearms counts were ordered to run concurrently, rather than consecutively. The Government has filed a motion for summary affirmance.

Rainwater may not raise a Booker claim. See United States v. Gentry, 432 F.3d 600, 605 (5th Cir. 2005). With regard to his remaining claim, Rainwater cannot demonstrate plain error because he cannot show that he was prejudiced by the imposition of concurrent rather than consecutive sentences. See United States v. Olano, 507 U.S. 725, 732-33 (1993). Accordingly, the Government's motion for summary affirmance is granted.

MOTION GRANTED; JUDGMENT AFFIRMED.