

April 11, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40275
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CUTBERTO ARNOLDO CASSO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CR-431-ALL

Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Cutberto Arnolndo Casso appeals the sentence imposed following his guilty-plea conviction for possession with intent to distribute approximately 596 kilograms of marijuana. Casso argues that the district court erred under United States v. Booker, 543 U.S. 220 (2005), by sentencing him pursuant to a mandatory guidelines scheme.

Because Casso raises this argument for the first time on appeal, we review only for plain error. See United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Valenzuela-Quevedo, 407 F.3d 728, 732 (5th. Cir.), cert. denied, 126 S. Ct. 267 (2005). Although the mandatory application of the Sentencing Guidelines constitutes error that is now clear in light of Booker, Casso has not shown that this error affected his substantial rights. See id.; United States v. Pennell, 409 F.3d 240, 245 (5th Cir. 2005). The fact that Casso was sentenced at the lowest end of the Guidelines does not indicate that his sentence would likely have been different under advisory Guidelines. See United States v. Bringier, 405 F.3d 310, 317-18 & n.4. (5th Cir.), cert. denied, 126 S. Ct. 264 (2005).

AFFIRMED.