

April 11, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-40282  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HERIBERTO MARTINEZ BRAVO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:04-CR-1024-ALL  
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Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Heriberto Martinez Bravo appeals from the sentence imposed for his guilty-plea conviction for conspiracy to possess with intent to distribute more than 100 kilograms of marijuana. On appeal, he argues that (1) the district court erred by applying the mandatory nature of the Sentencing Guidelines and by failing to state the reasons for the imposed sentence and (2) the district court erred by failing to uphold his objection regarding the overrepresentation of his criminal history. The Government

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

asserts that Martinez Bravo's appeal is barred by the appeal-waiver provision contained in his plea agreement.

Martinez Bravo argues that his appeal-waiver provision is invalid because his plea agreement was accepted before issuance of United States v. Booker, 543 U.S. 220 (2005). This court has recently rejected that precise argument. United States v. Burns, 433 F.3d 442, 450-51 (5th Cir. 2005). Martinez Bravo does not challenge the validity of his appeal-waiver provision on any other ground. Accordingly, Martinez Bravo's challenges to his sentence are barred by the appeal-waiver provision in his plea agreement. See United States v. Melancon, 972 F.2d 566, 568 (5th Cir. 1992).

AFFIRMED.