

November 3, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50132
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NELSON LEE HAISLER,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 6:04-CR-149-1

Before SMITH, GARZA, AND PRADO, Circuit Judges.

PER CURIAM:*

Nelson Haisler appeals his 151-month sentence following his guilty-plea conviction of attempting to manufacture methamphetamine within 1000 feet of a school. Haisler argues that the sentence is unreasonable under United States v. Booker, 125 S. Ct. 738, 756 (2005). He assigns no error in the guidelines computations. He is effectively arguing that the district court erred by sentencing him

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

pursuant to the mandatory sentencing guidelines regime at the time of sentencing rather than considering the guidelines as only on factor in determining his sentence. Because Haisler is raising this issue for the first time on appeal, plain error is the standard of review. See United States v. Malveaux, 411 F.3d 558, 560 n.9 (5th Cir. 2005), cert. denied, 2005 U.S. LEXIS 6485 (U.S. Oct. 3, 2005).

The district court committed error that is plain when it sentenced Haisler under a mandatory sentencing guidelines regime. See United States v. Valenzuela-Quevedo, 407 F.3d 728, 733 (5th Cir. 2005), cert. denied, 2005 U.S. LEXIS 6700 (U.S. Oct. 3, 2005); United States v. Martinez-Lugo, 411 F.3d 597, 601 (5th Cir. 2005), cert. denied, 2005 U.S. LEXIS 7577 (U.S. Oct. 11, 2005). Haisler fails to meet his burden of showing that the error affected his substantial rights. See Valenzeuela-Quevedo, 407 F.3d at 733-34; United States v. Mares, 402 F.3d 511, 521 (5th Cir. 2005), cert. denied, 2005 U.S. LEXIS 6132 (U.S. Oct. 3, 2005); see also United States v. Brinqier, 405 F.3d 310, 317 n.4 (5th Cir. 2005), cert. denied, 2005 U.S. LEXIS 6686 (U.S. Oct. 3, 2005).

AFFIRMED.