

April 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40769
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE ALPHONSO ESCAMILLA, JR.,
also know as "Wawa,"

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:03-CR-39-3

Before JONES, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Jose Alphonso Escamilla, Jr., appeals the 210-month sentence imposed following his guilty plea conviction for conspiracy to manufacture, distribute, or possess with intent to manufacture, distribute, or dispense methamphetamine and marijuana. Escamilla argues that the district court plainly erred in sentencing him under the Sentencing Guidelines in light of United States v. Booker, 125 S. Ct. 738 (2005). He argues that his Sixth

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Amendment right was violated because his sentence was enhanced based on facts which he did not admit were true.

Escamilla has not demonstrated that the district court would have imposed a different or a lesser sentence if it had been guided by the Booker holding. Thus, Escamilla has failed to show that the district court plainly erred in imposing his sentence. See United States v. Mares, ___ F.3d ___, No. 03-21035, 2005 WL 503715 at *9 (5th Cir Mar. 4, 2005), petition for cert. filed, No. 04-9517 (U.S. Mar. 31, 2005). The sentenced is AFFIRMED.