

April 11, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-50149  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR JAIME GARZA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:04-CV-76-AML  
USDC No. 2:02-CR-539-1-AML  
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Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Oscar Jaime Garza, federal prisoner # 30078-180, appeals the district court's denial of his 28 U.S.C. § 2255 motion challenging his guilty-plea conviction for conspiracy to possess with intent to distribute marijuana. He argues that the district court violated his Sixth Amendment rights by imposing a sentence based on the court's findings that the offense involved more marijuana than he admitted in his factual basis and that he was a leader or organizer in the offense. He argues that his sentence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

should be vacated in view of United States v. Booker, 543 U.S. 220 (2005). The district court granted a certificate of appealability on the issue "[w]hether the holding in Booker applies retroactively to a § 2255 collateral attack of a sentence." We have now held that Booker is not retroactively applicable to an initial § 2255 motion. United States v. Gentry, 432 F.3d 600, 604-05 (5th Cir. 2005). Accordingly, the district court's judgment is AFFIRMED.