

August 17, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-11341
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHANTEL YEARWOOD,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:04-CR-39-2

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Chantel Yearwood appeals the sentence imposed following her guilty-plea conviction for possession with the intent to distribute 17.744 kilograms of phencyclidine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). Yearwood argues that, in light of United States v. Booker, 125 S. Ct. 738 (2005), the district court erred in imposing a sentence utilizing the Sentencing Guidelines as mandatory. We review for plain error.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

See United States v. Mares, 402 F.3d 511, 520 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005) (No. 04-9517).

Application of the Guidelines as mandatory, even absent a Sixth Amendment violation as is the case here, is plain or obvious error after Booker. See United States v. Valenzuela-Quevedo, 407 F.3d 728, 733 (5th Cir. 2005), petition for cert. filed (July 25, 2005) (No. 05-5556). However, Yearwood cannot show that the error affected her substantial rights because the record does not indicate that the district court would have imposed a lower sentence under an advisory, rather than a mandatory, Guidelines scheme. See id.

AFFIRMED.