

August 17, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-40055  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GARY DWIGHT BLAIR,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:04-CR-81-ALL  
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Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:\*

Gary Dwight Blair, a federal prisoner, appeals following his guilty plea to a charge of assaulting a correctional officer, in violation of 18 U.S.C. § 111. Blair argues that the district court committed reversible error by imposing a sentence pursuant to the mandatory Federal Sentencing Guidelines system that was held unconstitutional in United States v. Booker, 125 S. Ct. 738 (2005). We review for plain error. See United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Valenzuela-Quevedo, 407 F.3d 728, 732 (5th Cir. 2005), petition for cert. filed (July 25, 2005)(No. 05-5556).

The district court committed error that is plain by sentencing Blair under a mandatory Sentencing Guidelines scheme. See id.; United States v. Mares, 402 F.3d 511, 520-21 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005)(No. 04-9517). However, Blair has not carried his burden of showing that the district court's error affected his substantial rights. See Valenzuela-Quevedo, 407 F.3d at 733-34; Mares, 402 F.3d at 521.

Accordingly, the district court's judgment is AFFIRMED.