

August 17, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50037
c/w No. 05-50095
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE GERARDO RAMOS-GARCIA,

Defendant-Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 3:04-CR-1672-ALL

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

In this consolidated appeal, Jose Gerardo Ramos-Garcia appeals only from his guilty-plea conviction for knowingly making a false statement on a resident alien application (No. 05-50095); Ramos-Garcia abandons any challenge with respect to the revocation of his supervised release relating to his prior illegal reentry conviction (No. 05-50037).

Ramos-Garcia contends that his sentence is invalid in light of United States v. Booker, 125 S. Ct. 738 (2005), because the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sentencing judge applied the sentencing guidelines as if they were mandatory. We review for plain error. United States v. Valenzuela-Quevedo, 407 F.3d 728, 732 (5th Cir. 2005), petition for cert. filed (July 25, 2005) (No. 05-5556). To prevail under a plain error analysis, Ramos-Garcia must show, among other things, that the error prejudiced him by adversely affecting his substantial rights. Id. at 733.

Ramos-Garcia fails to establish that he would have received a lower sentence had the district court applied the sentencing guidelines as advisory rather than mandatory. See id. at 733-34. He thus fails to establish prejudice to his substantial rights. See id.

AFFIRMED.