

August 19, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-40527

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ARMANDO TORRES-AVILA

Defendant - Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:02-CR-819-1  
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ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:\*

This court affirmed the judgment of conviction and sentence of Armando Torres-Avila (Torres); the Supreme Court vacated and remanded for further consideration in light of United States v. Booker, 125 S. Ct. 738 (2005). United States v. Torres-Avila, No. 04-40527 (5th Cir. Dec. 16, 2004) (unpublished); vacated by sub nom. De la Cruz-Gonzalez v. United States, 125 S. Ct. 1995 (2005).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Torres argues that the district court erred by imposing a sentence pursuant to the mandatory federal sentencing guideline system that was held unconstitutional in Booker. Torres fails to meet his burden of showing that the district court's sentence under guidelines it deemed mandatory affected his substantial rights such that his sentence amounts to plain error. United States v. Valenzuela-Quevedo, 407 F.3d 728, 733 (5th Cir. 2005).

Because nothing in the Supreme Court's Booker decision requires us to change our prior affirmance in this case, we reinstate our judgment affirming Torres's conviction and sentence.

AFFIRMED.