

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20231
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHIRLEY THIBODEAUX,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:02-CR-541-1

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

PER CURIAM:*

Shirley Thibodeaux appeals her sentence imposed on a guilty-plea conviction for fraud in connection with identification documents in violation of 18 U.S.C. § 1028(a)(7), (b)(1)(D), (c)(3)(A). Thibodeaux argues that the district court erred in imposing a 12-level adjustment because the loss attributed to Thibodeaux exceeded \$200,000, a two-level adjustment because the offense involved more than 10 but fewer than 50 victims, and a two-level adjustment because Thibodeaux used one means of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

identification to unlawfully obtain another means of identification. See U.S.S.G. § 2B1.1(b)(1)(G), (b)(2)(A), (b)(9)(C)(i)(Nov. 2002).

For the first time on appeal, Thibodeaux argues that these sentencing adjustments were unconstitutional under Blakely v. Washington, 124 S. Ct. 2531 (2004). As Thibodeaux concedes, her Blakely argument is foreclosed by this court's decision in United States v. Pineiro, 377 F.3d 464, 473 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263). Accordingly, Thibodeaux's sentence is AFFIRMED.