

**FILED**

January 3, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-40685

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UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

Hoang Van Nguyen, also known as Soi, also known as Soy,

Defendant - Appellant

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Appeal from the United States District Court  
for the Eastern District of Texas

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**ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES**

Before DAVIS, SMITH and DENNIS, Circuit Judges.

PER CURIAM:\*

In our previous opinion in this case, we affirmed Defendant-Appellant Nguyen's conviction and sentence. See United States v. Nguyen, No. 04-40685, 115 Fed. Appx. 239 (5th Cir. 2004)(per curiam)(unpublished). Following our judgment, Nguyen filed a petition for certiorari. The Supreme Court granted Nguyen's petition for certiorari, vacated our judgment, and remanded the

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\*Pursuant to 5<sup>TH</sup> 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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

case to this court for further consideration in light of United States v. Booker, 125 S. Ct. 738 (2005). We now reconsider the matter in light of Booker and decide to reinstate our previous judgment affirming Nguyen's conviction and sentence.

Nguyen raised a Booker-related challenge to his sentence for the first time on direct appeal. Because Appellant made no Booker objection in the district court, however, Appellant's claim must fail under the plain-error test discussed in United States v. Mares, 402 F.3d 511, 520-22 (5th Cir. 2005). The district court sentenced appellant at the top of the guideline range and gave no indication of a desire to give a different sentence had the guidelines been advisory.

For the reasons stated above, our prior disposition remains in effect, and we REINSTATE OUR EARLIER JUDGMENT affirming Nguyen's conviction and sentence.