

June 2, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-51134
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODOLFO VALENZUELA-AVITIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:04-CR-1089-ALL-FM

Before DAVIS, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

Rodolfo Valenzuela-Avitia was convicted following pleading guilty to one count of illegal reentry, in violation of 8 U.S.C. § 1326. Valenzuela-Avitia has filed an unopposed motion to remand his case for re-sentencing, stating that both "parties agree that re-sentencing is appropriate and just" in light of the Supreme Court's opinion in United States v. Booker, 125 S. Ct. 738 (2005).

Valenzuela-Avitia's unopposed motion to remand for re-sentencing in Booker is GRANTED, and the Government's previously

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

filed motion for summary affirmance is DENIED. The Government's request for an extension of time in which to file its brief is DENIED AS MOOT. We VACATE the district court's sentence and REMAND for re-sentencing in accordance with Booker.

MOTION TO REMAND GRANTED; SUMMARY AFFIRMANCE DENIED; MOTION TO EXTEND TIME FOR FILING BRIEF DENIED AS MOOT; VACATED AND REMANDED FOR RE-SENTENCING.