

May 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-30990
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DARRYAN WASHINGTON

Defendant - Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:04-CR-75-ALL

Before KING, Chief Judge, and HIGGINBOTHAM and PRADO, Circuit
Judges.

PER CURIAM:*

Darryan Washington appeals from his final order of criminal
forfeiture following his guilty plea to conspiracy to distribute
cocaine. He argues pursuant to Blakley v. Washington, 124 S. Ct.
2531 (2004), and United States v. Booker, 125 S. Ct. 738 (2005),
that he had a Sixth Amendment right to have a jury resolve the
disputed issue whether \$148,000 seized by the Government was
obtained as a result of the drug conspiracy.

* 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this opinion should not be published and is not precedent except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.

The Supreme Court held in Libretti v. United States, 516 U.S. 29, 49 (1995), that "the right to a jury verdict on forfeitability [did] not fall within the Sixth Amendment's constitutional protection." Libretti has not been overruled by Blakely or Booker. Libretti therefore controls the constitutional issue "unless and until the Supreme Court itself determines to overrule it." Cf. United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000) (internal quotation marks and citation omitted). Given that Washington did not have a Sixth Amendment right to a jury trial of the disputed forfeiture issue, the issue whether he orally waived that right is moot.

AFFIRMED.