

November 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40106
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTURO MARTINEZ-CORPUS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-1577-ALL

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Arturo Martinez-Corpus appeals from his guilty-plea conviction of illegally reentering the United States after having been convicted of illegal entry. Martinez contends that the district court violated United States v. Booker, 125 S. Ct. 738 (2005), by sentencing him under the formerly mandatory Sentencing Guidelines regime. According to Martinez, application of the formerly mandatory regime was a structural error that should not require plain-error analysis. Martinez acknowledges that his structural-error and presumed-prejudice contentions are

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

foreclosed, and he concedes that he cannot satisfy the plain-error test applicable to issues raised for the first time on appeal, but he raises the issues to preserve them for further review.

Martinez's structural-error and presumptive-prejudice contentions are foreclosed. See United States v. Martinez-Lugo, 411 F.3d 597, 601 (5th Cir. 2005), cert. denied, ___ S. Ct. ___ (Oct. 11, 2005) (No. 05-6242). Martinez has failed to demonstrate that his sentence likely would have been different under an advisory sentencing regime. See United States v. Mares, 402 F.3d 511, 522 (5th Cir.), cert. denied, 126 S. Ct. 43 (2005). The district court imposed the longest sentence indicated by Martinez's sentencing range, denied Martinez's request for a downward departure, and indicated a lack of sympathy for Martinez.

AFFIRMED.