

October 5, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10318
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GREGORY HICKS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:03-CR-336-3

Before JONES, Chief Judge, and SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case following a remand for resentencing, Gregory Hicks raises arguments that are foreclosed by United States v. Johnson, 445 F.3d 793, 797-98 (5th Cir.), cert. denied, 126 S. Ct. 2884 (2006), which held that the sentencing guideline range should be determined in the same manner as before United States v. Booker, 543 U.S. 220 (2005), even though the sentencing court is not required to sentence within that range, and by United States v. Matthews, 312 F.3d 652, 657 (5th Cir. 2002), which held that under the law of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

case doctrine, an issue of fact or law decided on appeal may not be reexamined by the appellate court on a subsequent appeal. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.