

March 1, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-50945  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALEJANDRO CARDENAS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:04-CR-85-ALL-DB  
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Before JOLLY, DAVIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Alejandro Cardenas appeals his convictions and 80-month sentences for importing marijuana and possessing marijuana with intent to distribute. Cardenas argues that the district court abused its discretion by failing to order sua sponte a hearing to determine whether he was competent to plead guilty. He has not established that the district court had received information creating a bona fide doubt about competency. Pate v. Robinson,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

383 U.S. 375, 385 (1966); see also United States v. Davis, 61 F.3d 291, 304 (5th Cir. 1995).

Cardenas also contends that the district court erred in sentencing him pursuant to the mandatory Guidelines regime held unconstitutional in United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 764-65 (2005). The sentencing transcript is devoid of evidence that the district court would have imposed the same sentence under an advisory regime, and, therefore, the Government has not borne its burden of establishing beyond a reasonable doubt that the district court's error was harmless. See United States v. Walters, 418 F.3d 461, 464 (5th Cir. 2005).

CONVICTION AFFIRMED; VACATED AND REMANDED FOR RESENTENCING.