

August 16, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50984
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DOUGLAS CHRISTOPHER JONES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:04-CR-69-ALL

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Douglas Christopher Jones appeals the sentence he received after he pleaded guilty to possession of more than five grams of cocaine base with intent to distribute and the intentional use of a minor to avoid detection. Because Jones fails to show that he would have received a different sentence under Guidelines that were only advisory, he fails to establish plain error under United States v. Booker, 125 S. Ct. 738 (2005). See United States v. Valenzuela-Quevedo, 407 F.3d 732, 733-34 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2005), petition for cert. filed (July 25, 2005) (No. 05-5556). Further, given that Jones twice tested positive for drug use subsequent to his arrest, he fails to show that the district court clearly erred when it denied an adjustment for acceptance of responsibility. See United States v. Villaneuva, 408 F.3d 193, 203 & n.9, (5th Cir. 2005), petition for cert. filed (July 26, 2005) (No. 05-5580); United States v. Flucas, 99 F.3d 177, 180 (5th Cir. 1996); U.S.S.G. § 3E1.1, comment. (nn.1(B), 3, and 5).

AFFIRMED.