

**FILED**

January 30, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 03-51047

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

OSCAR GOMEZ-TRUJILLO

Defendant - Appellant

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Appeal from the United States District Court  
for the Western District of Texas, El Paso

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**ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES**

Before KING and BARKSDALE, Circuit Judges.\*

PER CURIAM:\*\*

IT IS ORDERED that Plaintiff-Appellee's motion to reinstate prior affirmance of Defendant-Appellant's conviction in lieu of filing supplemental Booker brief is GRANTED. Defendant-Appellant Oscar Gomez-Trujillo raised a Booker issue for the first time in his petition for certiorari. Thus, as he recognizes, we will not

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\* Judge Pickering was a member of the original panel but retired from the Court on December 8, 2004 and, therefore did not participate in this decision. This matter is being decided by a quorum. 28 U.S.C. § 46(d).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

consider his challenge absent extraordinary circumstances. Because Gomez-Trujillo cannot meet the plain-error test, he necessarily fails to meet the much more demanding standard for "extraordinary circumstances." United States v. Rodriguez-Gutierrez, 428 F.3d 201 (5th Cir. 2005). Gomez-Trujillo's conviction and sentence are AFFIRMED.

IT IS FURTHER ORDERED that Plaintiff-Appellee's alternative motion to extend time to file Plaintiff-Appellee's supplemental brief until 14 days after denial of motion to reinstate prior affirmance is DENIED as moot.