

April 11, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20559
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JONATHAN LEE RICHES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:03-CR-90-2

Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Jonathan Lee Riches appeals his sentence following his guilty plea conviction for conspiracy to commit wire fraud and for wire fraud in violation of 18 U.S.C. §§ 371 and 1343. He contends that he was sentenced in contravention of United States v. Booker, 543 U.S. 220 (2005).

Riches's plea agreement contained an express waiver of his "right to appeal the sentence imposed or the manner in which it was determined," but he retained the right to appeal "only (a) the sentence imposed above the statutory maximum; or (b) an

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

upward departure from the Sentencing Guidelines, which has not been requested by the United States as set forth in Title 18 U.S.C. § 3742(b).” The Government seeks to enforce the waiver.

Our review of the record indicates that the waiver was knowing and voluntary and that, under its plain language, it bars Riches’s Booker arguments. See United States v. Bond, 414 F.3d 542, 545-46 (5th Cir. 2005). The waiver is not invalid merely because it was made before Booker. See United States v. Burns, 433 F.3d 442, 450-51 (5th Cir. 2005).

AFFIRMED.