

June 29, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-30998
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILTON J. MORGAN, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:03-CR-60044-ALL

Before SMITH, GARZA and PRADO, Circuit Judges.

PER CURIAM:*

Wilton J. Morgan, Jr., appeals his sentence for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). Morgan argues that the district court committed reversible error under United States v. Booker, 543 U.S. 220 (2005), by sentencing him pursuant to a mandatory application of the Sentencing Guidelines. Because the district court at sentencing addressed Blakely v. Washington, 542 U.S. 296 (2004), in the context of the Sentencing Guidelines, we review 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

district court's "Fanfan" error under the harmless error standard of review. See United States v. Rodriguez, 15 F.3d 408, 414 (5th Cir. 1994); see United States v. Rodriguez-Mesa, 443 F.3d 397, 404 (5th Cir. 2006). The Government has not shown beyond a reasonable doubt that the error was harmless. See United States v. Walters, 418 F.3d 461, 463-64 (5th Cir. 2005). Accordingly, Morgan's sentence is vacated, and this case is remanded for resentencing.

Although Morgan has been released from custody, his Booker-based challenge of his sentence is not moot. See United States v. Johnson, 529 U.S. 53, 60 (2000) (recognizing that trial court may modify an individual's conditions of supervised release at any time after one year under 18 U.S.C. § 3583(e)(1) if warranted by conduct of defendant and interests of justice). We neither express nor intimate any view as to whether the terms of Morgan's supervised release should be modified.

The sentence is VACATED and case REMANDED FOR RESENTENCING.