

June 7, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-41505  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LORENZO CASTILLO-MARTINEZ, also known as Lorenzo  
Castillo-Bernal,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:04-CR-522-ALL  
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Before REAVLEY, JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:\*

Lorenzo Castillo-Martinez appeals the sentence imposed following his guilty-plea conviction for illegal reentry after deportation, having previously been convicted of a drug trafficking offense, in violation of 8 U.S.C. § 1326(a) & (b).

Castillo-Martinez argues that the district court erred in imposing his sentence under the mandatory Guidelines scheme held unconstitutional in United States v. Booker, 125 S. Ct. 738 (2005). Because Castillo-Martinez did not raise this issue in the district court, review is limited to plain error. See United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States v. Mares, 402 F.3d 511 (5th Cir. 2005), petition for cert. filed, (U.S. Mar. 31, 2005) (No. 04-9517). The district court erred in imposing Castillo-Martinez's sentence under the mandatory Guidelines scheme, and the error was obvious after Booker. See United States v. Valenzuela-Quevedo, \_\_\_ F.3d \_\_\_, No. 03-41754, 2005 WL 941353 at \*4 (5th Cir. Apr. 25, 2005). However, Castillo-Martinez has not shown that the error affected his substantial rights as he has not shown that the record shows the district court judge would have imposed a different or lesser sentence under a Booker advisory regime. See id. at \*\*4-5. Therefore, he has not met the requirements to show plain error.

Castillo-Martinez also argues that the "felony" and "aggravated felony" sentencing enhancements under 8 U.S.C. § 1326(b) are unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). He acknowledges that this argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve it for possible Supreme Court review. Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Sarmiento-Funes, 374 F.3d 336, 346 (5th Cir. 2004). This court must follow Almendarez-Torres, "'unless and until the Supreme Court itself determines to overrule it.'" United States v. Mancia-Perez, 331 F.3d 464, 470 (5th Cir.) (citation omitted), cert. denied, 540 U.S. 935 (2003).

AFFIRMED.