

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED

July 22, 2005

No. 04-51372

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RICHARD KEITH ESSER

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
(04-CR-386)

Before JONES, BARKSDALE, and PRADO, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that Appellee's motion to vacate sentence is granted.

IT IS FURTHER ORDERED that Appellee's motion to remand case to District Court for resentencing in light of the Supreme Court's recent opinion in Booker and this Court's opinion in Mares is granted.

* Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

IT IS FURTHER ORDERED that Appellee's alternative motion to extend time to file Appellee's brief fourteen (14) days after the denial of the Appellee's motion to vacate and remand is denied as unnecessary.