

May 9, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10049
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TORREY LIDELL DAVIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:04-CR-210-1-G

Before HIGGINBOTHAM, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Torrey Lidell Davis appeals the sentence imposed following his guilty-plea conviction for copyright infringement. Davis contends that his sentence is illegal under United States v. Booker, 543 U.S. 220 (2005), because it was based upon facts that were neither proved nor admitted and because the sentence was imposed pursuant to a mandatory application of the Sentencing Guidelines.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The Government has not carried its burden of demonstrating that the Booker error in this case was harmless. See United States v. Woods, 440 F.3d 255, 258-59 (5th Cir. 2006).

Accordingly, Davis's sentence is vacated, and the case is remanded for resentencing. Because it is necessary to vacate Davis's sentence based upon the Sixth Amendment Booker error, we need not address Davis's Fanfan claim. See United States v. Akpan, 407 F.3d 360, 377 n.62 (5th Cir. 2005).

CONVICTION AFFIRMED; SENTENCE VACATED; REMANDED FOR RESENTENCING.