

FOR THE FIFTH CIRCUIT

**FILED**

April 29, 2005

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No. 04-51060  
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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CHARLES PHELPS, JR also known as, Dave Smith also known as,  
Mr D

Defendant - Appellant

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Appeal from the United States District Court for the  
Western District of Texas, Waco  
6:03-CR-197-6  
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Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

IT IS ORDERED that Appellee's unopposed motion to vacate the sentence is GRANTED.

IT IS FURTHER ORDERED that Appellee's unopposed motion to remand the case to the Western District of Texas, Waco Division for resentencing is GRANTED.

IT IS FURTHER ORDERED that Appellee's alternative request for an extension of time to file the Appellee's brief 14 days from the denial of Appellee's motion to vacate and remand is MOOT.

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\* Pursuant to 5<sup>TH</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.