

April 11, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-11142  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CEDRIC DEMICHAEL BUTLER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:04-CR-100-ALL-G  
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Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Cedric Demichael Butler appeals the 71-month sentence imposed following his guilty plea conviction for possession of a firearm by a felon. 18 U.S.C. §§ 922(g)(1), 924(a)(2). He argues that his Sixth Amendment rights were violated at sentencing in violation of Blakely v. Washington, 542 U.S. 296 (2004), because his sentence was enhanced on the basis of facts not alleged in the indictment, admitted by him, or proved to a jury beyond a reasonable doubt. The Government argues that the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

appeal is barred by the appeal waiver provision in Butler's plea agreement. Butler contends that the waiver does not bar the appeal because the waiver contained an exception for an appeal of a sentence in excess of the statutory maximum punishment and because at the time of his plea "Blakely was not the law in the Fifth Circuit or any federal jurisdiction."

The record reflects that Butler knowingly and voluntarily waived his right to appeal his sentence. See United States v. Burns, 433 F.3d 442, 450-51 (5th Cir. 2005); United States v. Bond, 414 F.3d 542, 545-46 (5th Cir. 2005); United States v. Cortez, 413 F.3d 502, 503 (5th Cir.), cert. denied, 126 S. Ct. 502 (2005). The appeal waiver is enforceable and bars his claims on appeal.

AFFIRMED.