

**FILED**

**December 17, 2004**

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-50648  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GREGORY BEN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:04-CR-36-1-SS  
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Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Gregory Ben raises arguments that are foreclosed by United States v. Pineiro, 377 F.3d 464, 465-66 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263), which held that Blakely v. Washington, 124 S. Ct. 2531 (2004), does not apply to the United States Sentencing Guidelines. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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