

June 3, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41114
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODERIC CAIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:03-CR-667-2

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Roderic Cain appeals his 151-month sentence on a conviction for possession with intent to distribute in excess of 1,000 kilograms of marijuana. 21 U.S.C. § 841(a)(1), (b)(1)(A). For the first time on appeal, Cain argues the district court's determination of Cain's base offense level based upon an estimated drug quantity of 4,000 kilograms of marijuana was unconstitutional under United States v. Booker, 125 S. Ct. 738, 764 (2004).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Cain raises this argument for the first time on appeal, it is reviewed for plain error. See United States v. Mares, 402 F.3d 511, 520 (5th Cir. 2005), petition for cert. filed, No. 04-9517 (U.S. Mar. 31, 2005). Cain fails to demonstrate that the district court would have reached a significantly different result under an advisory guidelines scheme. See Mares, 402 F.3d at 521-22. Accordingly, Cain cannot establish plain error with respect to the district court's base offense level. See id. The sentence of the district court is AFFIRMED.