

November 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50184
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN DELGADO-PALAMAROS,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:04-CR-699-ALL

Before REAVLEY, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Juan Delgado-Palamaros raises arguments that are foreclosed by United States v. Scroggins, 411 F.3d 572, 576-77 (5th Cir. 2005), which held that the Due Process Clause does not bar the application of Justice Breyer's remedy opinion in United States v. Booker, 125 S. Ct. 738 (2005), when resentencing defendants in light of Booker, and by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that a prior conviction is a sentencing

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

factor under 8 U.S.C. § 1326(b)(2) and not a separate criminal offense. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.