

August 17, 2005

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 03-10097
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PRISCILLA DeVITA,

Defendant-Appellant.

Appeals from the United States District Court
for the Northern District of Texas
(5:02-CR-91-2)

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before BARKSDALE, GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

This court affirmed Priscilla DeVita's conviction and sentence, following a jury trial, for conspiracy and aiding and abetting to take a motor vehicle resulting in serious bodily injury, in violation of 18 U.S.C. §§ 2, 371, 2119, and 2119(2). *United States v. Devita*, 03-10097, 86 Fed. Appx. 738 (5th Cir. 10 Feb. 2004) (unpublished). The Supreme Court granted Devita's petition for writ of certiorari and for leave to proceed *in forma*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

pauperis; vacated our previous judgment; and remanded the case for further consideration in the light of *United States v. Booker*, 543 U.S. ___, 125 S. Ct. 738 (2005). *DeVita v. United States*, 125 S. Ct. 1032 (2005).

We requested supplemental briefs from the parties addressing the impact of *Booker*. DeVita filed a supplemental brief, claiming reversible plain error; citing new authority, discussed below, the Government moved to reinstate the prior affirmance of DeVita's conviction and sentence, or, in the alternative, for an extension of time to file its supplemental brief. Other than advising the Government that she opposes its motion, DeVita did not respond.

DeVita did not raise *Booker*-error until her petition for writ of certiorari. Absent extraordinary circumstances, we will not consider a defendant's *Booker*-related claims presented for the first time in a petition for writ of certiorari. *United States v. Taylor*, 409 F.3d 675, 676 (5th Cir. 2005). DeVita has not demonstrated the requisite extraordinary circumstances. Therefore,

IT IS ORDERED that Appellee's motion to reinstate prior affirmance of Appellant's conviction and sentence is **GRANTED**.

IT IS FURTHER ORDERED that Appellee's alternative request for an extension of time of 14 days from the court's denial of the motion to reinstate prior affirmance of Appellant's conviction and sentence to file its supplemental brief is **DENIED AS MOOT**.