

January 25, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-20901  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM GLENN CHUNN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:04-CR-153-ALL  
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Before BARKSDALE, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:\*

William Glenn Chunn appeals the sentence following his guilty plea conviction to possessing 50 grams or more of methamphetamine with intent to distribute, to possessing a firearm during and in relation to a drug-trafficking offense, and to being a felon in possession of a firearm. Chunn asserts that because the district court calculated the relevant drug quantity by adding a quantity of pseudoephedrine that Chunn did not admit to possessing, the sentence violated the Sixth Amendment pursuant

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to United States v. Booker, 125 S. Ct. 738 (2005). Because Chunn raised this objection in the district court, this court will ordinarily remand for resentencing, unless the Government can show that the court's sentencing error was harmless beyond a reasonable doubt. United States v. Pineiro, 410 F.3d 282, 284 (5th Cir. 2005).

The Government asserts that because Chunn was sentenced in the middle of the applicable guideline range, the sentence was harmless. This court has rejected such an assertion. See United States v. Garza, 429 F.3d 165, 170-71 (5th Cir. 2005). Because the Government cannot show that the district court would have imposed the same sentence in the absence of the pseudoephedrine quantity used, the judgment of the district court is VACATED and the case is REMANDED to the district court for resentencing for the drug conviction.