

June 21, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-30785  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES CUVILLIER, SR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:03-CR-199-6-J  
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Before KING, Chief Judge, and HIGGINBOTHAM and PRADO, Circuit  
Judges.

PER CURIAM:\*

Charles Cuvillier, Sr., appeals his sentence following a  
guilty plea to conspiracy to distribute more than 50 grams of  
cocaine base and more than five kilograms of cocaine  
hydrochloride. Cuvillier executed a plea agreement waiving  
certain of his appellate rights; however, he reserved the right  
to appeal "any punishment imposed in excess of the statutory  
maximum." Cuvillier's sentence is based solely on facts to which  
he stipulated in connection with his guilty plea.

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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this opinion should not be published and is not precedent except  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.

Nevertheless, Cuvillier argues that his sentence exceeds the statutory maximum sentence allowable under United States v. Booker, 125 S. Ct. 738 (2005), because he did not knowingly and voluntarily waive his rights under the Sixth Amendment when he stipulated to the facts supporting his guilty plea. Thus, he contends that the waiver provision in his plea agreement does not bar his appeal. He further argues that he must be resentenced because the district court's belief that the sentencing guidelines were mandatory prevented the court from considering potential mitigating evidence.

Our review of the record shows that Cuvillier's waiver of his appellate rights was knowing and voluntary. This appeal is barred by the "plain language" of the waiver because Cuvillier's 180-month term of imprisonment, which is based solely on his own admissions, does not exceed the statutory maximum term of life imprisonment that could have been imposed for the offense.

United States v. McKinney \_\_\_ F.3d \_\_\_, No. 04-41223, 2005 WL 887153 at \*2 (5th Cir. April 15, 2005); 21 U.S.C. § 841(b)(1)(A); see Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004).

AFFIRMED.