

April 11, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40443
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO LEDESMA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:03-CR-325-2

Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Francisco Ledesma appeals the 46-month sentence imposed following his guilty plea conviction for conspiracy to commit tax fraud. He argues for the first time on appeal that the district court violated his Sixth Amendment rights by enhancing his sentence based on facts that were not admitted by him or found by a jury beyond a reasonable doubt. He argues that this was constitutional error in light of the holding in United States v. Booker, 543 U.S. 220 (2005).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The Government argues that Ledesma waived his right to appeal his sentence or the manner in which it was determined. Ledesma argues that the appeal waiver does not bar his claim, which in effect is a claim that his sentence exceeds the statutory maximum. He also argues that he did not waive the right to appeal a structural error and that the waiver should not be enforced for public policy reasons. The record reflects that Ledesma knowingly and voluntarily waived his right to appeal his sentence. See United States v. Burns, 433 F.3d 442, 450 (5th Cir. 2005); United States v. Bond, 414 F.3d 542, 545-46 (5th Cir. 2005); United States v. Cortez, 413 F.3d 502, 503 (5th Cir.), cert. denied, 126 S. Ct. 502 (2005). Ledesma's appeal waiver is enforceable and bars his claims on appeal.

AFFIRMED.