

January 4, 2006

Charles R. Fulbruge III
Clerk

REVISED JANUARY 18, 2006

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40685

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

Hoang Van Nguyen, also known as Soi, also known as Soy,

Defendant - Appellant

Appeal from the United States District Court
for the Eastern District of Texas

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before DAVIS, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

In our previous opinion in this case, we affirmed Defendant-Appellant Nguyen's conviction and sentence. See United States v. Nguyen, No. 04-40685, 115 Fed. Appx. 239 (5th Cir. 2004)(per curiam)(unpublished). Following our judgment, Nguyen filed a petition for certiorari. The Supreme Court granted Nguyen's

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

petition for certiorari, vacated our judgment, and remanded the case to this court for further consideration in light of United States v. Booker, 125 S. Ct. 738 (2005). We now reconsider the matter in light of Booker and decide to reinstate our previous judgment affirming Nguyen's conviction and sentence.

Nguyen raised a Booker-related challenge to his sentence for the first time on direct appeal. Because Appellant made no Booker objection in the district court, however, Appellant's claim must fail under the plain-error test discussed in United States v. Mares, 402 F.3d 511, 520-22 (5th Cir. 2005). The district court sentenced appellant at the top of the guideline range and gave no indication of a desire to give a different sentence had the guidelines been advisory.

For the reasons stated above, our prior disposition remains in effect, and we REINSTATE OUR EARLIER JUDGMENT affirming Nguyen's conviction and sentence.