

June 22, 2005

Charles R. Fulbruge III  
Clerk

THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-41254  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALBERTO GARZA-MIRANDA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:04-CR-314-ALL  
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Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Alberto Garza-Miranda ("Garza") appeals the 33-month sentence of imprisonment imposed following his guilty-plea conviction of one count of being found illegally in the United States following removal. See 8 U.S.C. § 1326(a), (b).

Garza, relying on Blakely v. Washington, 124 S. Ct. 2531 (2004), argues that the district court violated his rights under the Sixth Amendment by enhancing his sentence by 16 levels under U.S.S.G. § 2L1.2(b)(1)(A)(i). The Sixth Amendment holding of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Blakely applies to the federal sentencing guidelines. See United States v. Booker, 125 S. Ct. 738, 746 (2005). Because Garza did not raise his argument in the district court, our review is for plain error only. See United States v. Mares, 402 F.3d 511, 520 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005) (No. 04-9517). Our review of the record reveals no indication that the district court, sentencing under an advisory scheme rather than a mandatory one, would have reached a significantly different result as to Garza's sentence. See id. at 521. Because Garza cannot establish that his substantial rights were affected, he cannot establish plain error. See id. Accordingly, the judgment of the district court is AFFIRMED.