

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10039
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROGELIO PEREZ-TRUJILLO, also known as Roberto
Gutierrez, also known as Rogelio Cerda-Trevino,
also known as Eduardo Hernandez Lozano,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:03-CR-277-ALL-L

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Rogelio Perez-Trujillo raises arguments that are foreclosed by United States v. Mares, 402 F.3d 511, 520 (5th Cir.), cert. denied, 126 S. Ct. 43 (2005), and its progeny, which held that unpreserved claims based on United States v. Booker, 125 S. Ct. 738 (2005), are reviewed for plain error and by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that a prior conviction is a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sentencing factor under 8 U.S.C. § 1326(b)(2) and not a separate criminal offense. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.