

December 12, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20357
c/w No. 05-20503
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANH TUAN TRAN,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-433-ALL

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Anh Tuan Tran appeals the sentence imposed following his guilty-plea convictions for possession with the intent to distribute a controlled substance and being a felon in possession of a firearm. Tran argues that the district court erred in sentencing him based on additional amounts of controlled substances not charged in the indictment and not admitted by him during his plea colloquy. He argues that because the additional amounts of controlled substances were not proved beyond 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

reasonable doubt, his sentence was erroneous under United States v. Booker, 543 U.S. 220 (2005).

Tran was sentenced after Booker was decided and therefore he was not subjected to a mandatory sentencing regime. "Booker contemplates that, with the mandatory use of the Guidelines excised, the Sixth Amendment will not impede a sentencing judge from finding all facts relevant to sentencing." United States v. Johnson, 445 F.3d 793, 798 (5th Cir.), cert. denied, 126 S. Ct. 2884 (2006). "The sentencing judge is entitled to find by a preponderance of the evidence all the facts relevant to the determination of a Guideline sentencing range and all facts relevant to the determination of a non-Guidelines sentence." Id. Such is the case "even where calculation of the appropriate range requires the court to take into account facts not proven to a jury." Id. Accordingly, Tran's argument lacks merit.

AFFIRMED.