

January 18, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20745
Summary Calendar

UNITES STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEONARDO COMPEAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-137-1

Before REAVLEY, WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

Leonardo Compean appeals his conviction for conspiracy to possess with intent to distribute 100 kilograms or more of marijuana, money laundering, aiding and abetting, and possession of a firearm during and in relation to a drug trafficking crime. Compean's first two arguments, that the district court erred by failing to adequately inquire into his eligibility for appointed counsel and that his waiver of counsel was not knowing and voluntary, are without merit because Compean was already

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

represented by retained counsel at the sentencing hearing but opted instead to represent himself.

Compean's reliance on United States v. Reyes-Celistino, 443 F.3d 451 (5th Cir. 2006), to support his argument that he did not waive his right to raise a claim under United States v. Booker, 543 U.S. 220 (2005), in the plea agreement is also unavailing. Compean was sentenced in August 2005, after the Supreme Court's opinion in Booker and under the advisory Sentencing Guidelines system now in effect. Thus the district court applied the Sentencing Guidelines in an advisory way, and no error occurred.

Finally, Compean's contention that the district court's application of the Sentencing Guidelines as advisory violated due process is foreclosed by this court's decision in United States v. Austin, 432 F.3d 598 (5th Cir. 2005).

AFFIRMED