

March 16, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40186
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN PABLO ROBLES-HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:04-CR-613-ALL

ON PETITION FOR REHEARING

Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that the petition for rehearing filed by appellant is GRANTED. The panel opinion, dated February 14, 2007, is withdrawn, and the following opinion is substituted:

Juan Pablo Robles-Hernandez pleaded guilty to being found in the United States without having obtained permission to re-enter and after having been removed subsequent to a conviction for an aggravated felony. In his plea agreement, Robles-Hernandez waived his right to appeal his conviction and sentence except for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a sentence above the statutory maximum or an upward departure from the Sentencing Guidelines.

Robles-Hernandez argues that the waiver of his right to appeal his sentence is unenforceable because he entered his guilty plea prior to the decision in United States v. Booker, 543 U.S. 220 (2005), and may have waived rights of which he was unaware. Robles-Hernandez concedes that this argument is foreclosed by United States v. Burns, 433 F.3d 442, 450-51 (5th Cir. 2005), but he raises it here to preserve it for further review.

Notwithstanding his concession that his waiver of appeal is enforceable, Robles-Hernandez seeks to appeal his sentence. Robles-Hernandez does not suggest that either of the conditions supporting the specific exceptions to the waiver exist. Accordingly, Robles-Hernandez may not appeal his sentence. The judgment of the district court is AFFIRMED. See United States v. Story, 439 F.3d 226, 230-31 (5th Cir. 2006).

Robles-Hernandez's pro se motion for the appointment of counsel is DENIED.