

June 21, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40600
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO DEWAYNE FRAZIER,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas

USDC No. 3:05-CV-105

USDC No. 3:95-CR-10-3

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Antonio Dewayne Frazier, federal prisoner # 46222-079, was convicted of conspiracy to possess with the intent to distribute more than five kilograms of cocaine and 50 grams or more of cocaine base and was sentenced to 402 months of imprisonment. Frazier filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 in 2001, which was dismissed as time-barred. Frazier filed a second § 2255 motion in 2005, arguing that his sentence was unconstitutional in light

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of the decision in United States v. Booker, 543 U.S. 220 (2005). The district court dismissed Frazier's motion as an unauthorized successive § 2255 motion but granted a certificate of appealability (COA) on the issue whether Booker is retroactively applicable to cases on collateral review.

Booker does not apply retroactively to cases on initial collateral review. United States v. Gentry, 432 F.3d 600, 604 (5th Cir. 2005). Further, Booker is not a ground for filing a successive § 2255 motion. In re Elwood, 408 F.3d 211, 213 (5th Cir. 2005).

Accordingly, the judgment of the district court is AFFIRMED. Frazier's motion to stay proceedings is DENIED.