

November 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40607
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNNY TERRELL SMITH,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:04-CR-116-12

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Johnny Terrell Smith appeals following his guilty plea and sentence for conspiracy to manufacture, distribute, or possess with intent to manufacture, distribute, or dispense cocaine base. Smith argues, in reliance on United States v. Booker, 125 S. Ct. 738 (2005), that his sentence violates the Sixth Amendment. The instant appeal is barred, however, by the plain language of Smith's knowing and voluntary appeal waiver in the plea agreement. See United States v. Bond, 414 F.3d 542, 545-46

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. 2005); United States v. McKinney, 406 F.3d 744, 746-47

(5th Cir. 2005).

APPEAL DISMISSED.