

December 12, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41452
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERTO FERNANDO RENDON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:05-CR-178-3

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Roberto Fernando Rendon appeals his sentence following his guilty-plea conviction for possession of more than five kilograms of cocaine with intent to distribute. He argues that the district court erred by increasing his sentence on the basis of facts neither admitted by him nor found by a jury beyond a reasonable doubt. Because the district court was not operating under a mandatory guidelines regime when it sentenced Rendon, the district court was authorized to find pertinent sentencing facts. United States v. Mares, 402 F.3d 511, 516-20 (5th Cir.), cert.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

denied, 126 S. Ct. 43 (2005). Rendon also contends that the district court wrongly considered the Sentencing Guidelines as mandatory despite the decision in United States v. Booker, 543 U.S. 220 (2005). This assertion is unsupported by the record. Consequently, the judgment of the district court is AFFIRMED.