

FILED

December 6, 2005

Charles R. Fulbruge III
Clerk

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

No. 05-60327

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DARWIN DJUNA LOWE,

Defendant - Appellant.

Appeal from the United States District Court
For the Southern District of Mississippi
USDC No. 3:04-CR-173-ALL

Before SMITH, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Darwin Djuna Lowe appeals his sentence imposed following a plea of guilty to three counts of possessing cocaine base with intent to distribute in violation of 21 U.S.C. § 841(a)(1). Lowe contends that the district court erred in sentencing him based on facts not admitted by him or found

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

by a jury. Lowe was sentenced, however, after the Supreme Court issued *United States v. Booker*, 125 S.Ct. 738 (2005). The transcript of the sentencing proceedings reveals that the parties debated the reasonableness of the sentence recommended by the United States Sentencing Guidelines and that the district court was aware of its ability to sentence outside of the Guidelines range. Contrary to Lowe's contention, *Booker* requires the district court to determine the Guidelines range in the same manner as before *Booker*, including "finding all facts relevant to sentencing." *United States v. Mares*, 402 F.3d 511, 519 (5th Cir. 2005). Whereas in this case the Guidelines were not applied in a mandatory fashion, such fact finding does not violate the Sixth Amendment. *Id.*

Accordingly, the judgment of the district court is **AFFIRMED**.