

March 7, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10942
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NANCY GUTIERREZ SMELOSKY, also known as Nancy Smelosky,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:04-CR-39-ALL

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Nancy Gutierrez Smelosky raises arguments that are foreclosed by United States v. Scroggins, 411 F.3d 572, 576-77 (5th Cir. 2005), which held that the Due Process Clause does not bar the application of Justice Breyer's remedy opinion in United States v. Booker, 543 U.S. 220 (2005), when resentencing defendants in light of Booker. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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