

FILED

September 7, 2007

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 06-11162
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

RANDY REED THROCKMORTON

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:06-CR-69-3

Before HIGGINBOTHAM, STEWART, and OWEN, Circuit Judges.

PER CURIAM:*

Randy Reed Throckmorton appeals the sentence imposed following his guilty plea conviction for mail fraud, aiding and abetting. Throckmorton argues that his sentence is unreasonable as a matter of law because this court's application of a presumption of reasonableness to sentences imposed within a properly calculated guidelines range is in violation of the principles announced in *United States v. Booker*, 543 U.S. 220 (2005). He concedes that the argument is foreclosed by circuit precedent but raises it to preserve it for further review.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Throckmorton's argument is foreclosed by *Rita v. United States*, 127 S. Ct. 2456, 2462-66 (2007), wherein the Supreme Court affirmed the use of a presumption of reasonableness to review sentences imposed within the guidelines range.

Throckmorton also argues that his sentence of 46 months of imprisonment, which was within the applicable advisory sentencing guidelines range, is unreasonable because the district court failed to consider the factors of 18 U.S.C. § 3553(a) and did not articulate its reasons for the imposition of his sentence. Throckmorton has not shown that the sentence was unreasonable or that this court should not defer to the district court's determinations at sentencing. See *United States v. Mares*, 402 F.3d 511, 519 (5th Cir. 2005). Moreover, little explanation is required when a court imposes a sentence within the advisory guidelines range. See *id.*

Accordingly, the Government's motion for summary affirmance or dismissal is DENIED. The Government's alternative request for extension of time is DENIED as unnecessary. The judgment of the district court is AFFIRMED.