

April 24, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-30478
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CECILIO PEREZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:05-CR-295-ALL

Before DAVIS, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Cecilio Perez appeals his guilty-plea conviction and sentence for illegal reentry following deportation in violation of 8 U.S.C. § 1326. He contends that the presumption of reasonableness this court accords sentences imposed within the advisory guideline range erroneously constrains the district court's discretion. Specifically, Perez argues that the validity of this court's sentencing framework after United States v. Booker, 543 U.S. 220 (2005), is under consideration by the Supreme Court in Rita v. United States, 127 S. Ct. 551

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(U.S. Nov. 3, 2006) (No. 06-5754), and Claiborne v. United States, 127 S. Ct. 551 (U.S. Nov. 3, 2006) (No. 06-5618). Thus, he argues that if the Supreme Court were to find this framework inconsistent with Booker, he would be entitled to resentencing.

Because an intervening Supreme Court case explicitly or implicitly overruling prior precedent is required to alter this court's precedent, the grants of certiorari in Rita and Claiborne have no impact on this court's precedent. See United States v. Short, 181 F.3d 620, 624 (5th Cir. 1999). In the instant case, the district court considered the Guidelines and determined that a sentence at the bottom of the guideline range was appropriate. Because the court exercised its discretion to impose a sentence within a properly calculated guideline range, this court may infer, in its reasonableness review, that the court considered all the factors for a fair sentence set forth in the Guidelines. United States v. Mares, 402 F.3d 511, 519 (5th Cir. 2005). This court has examined the record and concludes that the sentence imposed by the district court is reasonable.

AFFIRMED.