

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-31284  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

September 27, 2007

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FERNANDO HERRERA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Louisiana  
No. 5:05-CR-50112

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Before REAVLEY, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Fernando Herrera pleaded guilty of conspiracy to distribute 50 grams or more of methamphetamine or 500 grams or more of a mixture or substance con-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

taining methamphetamine and was sentenced to 324 months of imprisonment and five years of supervised release. He argues that the district court violated his Sixth Amendment rights when it treated the guideline range as the presumptively appropriate sentence and placed little, if any, weight on the other sentencing factors described in 18 U.S.C. § 3553(a). The record does not support that contention.

Herrera contends that affording a presumption of reasonableness to his sentence merely because it is within the guideline range is a violation of the Sixth Amendment. That argument is foreclosed by *Rita v. United States*, 127 S. Ct. 2456, 2462 (2007).

Herrera claims his sentence is unreasonable. The record shows that the district court gave adequate, proper reasons for its choice of a sentence within the pertinent guideline range. See *United States v. Nikonova*, 480 F.3d 371, 376 (5th Cir. 2007), petition for cert. filed (May 21, 2007) (No. 06-11834); *United States v. Mares*, 402 F.3d 511, 519-20 (5th Cir. 2005).

AFFIRMED.