

December 12, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40373
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO JAVIER LONGORIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:04-CR-725-3

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Francisco Javier Longoria appeals the 151-month sentence imposed following his guilty-plea conviction for possession with intent to distribute 510 kilograms of marijuana, in violation of 21 U.S.C. § 841(a). He contends that his Sixth Amendment rights were violated because his sentence was based on facts found by the sentencing court by a preponderance of the evidence. He also contends that he was sentenced under mandatory Sentencing Guidelines contrary to United States v. Booker, 543 U.S. 220 (2005).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The record reflects, however, that Longoria was sentenced under the post-Booker advisory guidelines scheme, which requires the sentencing court to calculate the guideline range in the same manner as before Booker and to make factual findings by a preponderance of the evidence. See United States v. Johnson, 445 F.3d 793, 797-98 (5th Cir.), cert. denied, 126 S. Ct. 2884 (2006). The judgment of the district court is AFFIRMED.