

June 19, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-40551  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BYRON KEITH DARBONNE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:05-CR-47-ALL  
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Before JONES, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:\*

Byron Keith Darbonne pleaded guilty to two counts of using a communication facility to facilitate the commission of a felony. Darbonne expressly waived the right to appeal his conviction and sentence. Darbonne, however, reserved the right to appeal if the district court imposed a sentence that was not in accordance with the terms of the agreement or if ineffective assistance of counsel affected the validity of the waiver of appeal. The district court sentenced Darbonne to 48 months of imprisonment on

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

each count with the terms to be served consecutively, for a total of 96 months in prison.

Darbonne argues that his sentence was unreasonable following United States v. Booker, 543 U.S. 220 (2005). The Government argues that the waiver clause is valid and should be enforced. The record reflects that Darbonne knowingly and voluntarily waived his appellate rights. See United States v. Melancon, 972 F.2d 566, 567-68 (5th Cir. 1992). Consideration of Darbonne's Booker-related claim is barred by the plain language of the waiver. See United States v. Bond, 414 F.3d 542, 544 (5th Cir. 2005). Accordingly, we do not consider the merits of Darbonne's sentencing challenge, and the judgment of the district court is AFFIRMED.