

July 16, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-41117
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ENRIQUE MORENO SANCHEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
No. 2:02-CR-239-ALL

Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Enrique Sanchez appeals the sentence imposed at resentencing for his conviction of being a felon in possession of a firearm. This court previously vacated Sanchez's sentence and ordered resentencing in light of United States v. Booker, 543 U.S. 220 (2005). Sanchez contends that the evidence is legally insufficient to support his conviction with regard to the commerce element of 18

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.C. § 922(g)(1). He concedes, however, that his argument is foreclosed and raises it only to preserve it for further review. The government moves for summary affirmance on the ground that the only issue raised on appeal is foreclosed.

“On a second appeal following remand, the only issue for consideration is whether the court below reached its final decree in due pursuance of [this court’s] previous opinion and mandate.” Burroughs v. F.F.P. Operating Partners, 70 F.3d 31, 33 (5th Cir. 1996). In the prior appeal in this case, we limited the scope of the remand to resentencing in light of Booker. Because the sole issue Sanchez raises on appeal is beyond the scope of review, we decline to consider it.

The government’s motion for summary affirmance is DENIED. The government’s alternative request for extension of time is DENIED as unnecessary. The judgment is AFFIRMED.