

June 20, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-41190
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FIDEL GARZA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:06-CR-223-1

Before DAVIS, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Fidel Garza appeals the 120-month sentence following his guilty-plea conviction to possession of a firearm by a convicted felon. Garza asserts that he was deprived of due process and his right to a jury trial because he was sentenced based on findings not admitted by him and not determined by a jury contrary to the holdings in United States v. Booker, 543 U.S. 220 (2005), Blakely v. Washington, 542 U.S. 296 (2004), and Apprendi v. New Jersey, 530 U.S. 466 (2000). He asserts that his rights under the Fifth and Sixth Amendments were violated. A district court can make

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

all factual findings necessary to determine a post-Booker sentence based on the preponderance of the evidence and such findings do not violate the Sixth Amendment. United States v. Mares, 402 F.3d 511, 519 (5th Cir. 2005). Mares also implicitly rejected any claim based on the Fifth Amendment. Id.

Garza also contends that the district court improperly calculated the applicable guideline range for his case. Garza bases his assertions on misstatements of the district court's consideration of the Sentencing Guidelines. To the extent that Garza is attempting to raise a challenge to the guideline calculations that is distinct from the constitutional argument noted above, he has not explained why the district court's calculations were incorrect and thus has failed to adequately brief any such argument. Counsel's brief need not be liberally construed to find such an argument. See Beasley v. McCotter, 798 F.2d 116, 118 (5th Cir. 1986). The judgment of the district court is AFFIRMED.