

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 8, 2007

No. 06-41598
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

DAVID PEREZ-HERNANDEZ, also known as David Perez-Sanchez

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:06-CR-614-ALL

Before DENNIS, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, David Perez-Hernandez (Perez) seeks to preserve for further review his contention that his sentence is unreasonable because this court's post-Booker** rulings have effectively reinstated the mandatory Sentencing Guideline regime condemned in Booker. Perez concedes that his argument is foreclosed by *United States v. Mares*, 402

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

** *United States v. Booker*, 543 U.S. 220 (2005).

F.3d 511 (5th Cir. 2005), and its progeny, which have outlined this court's methodology for reviewing sentences for reasonableness. In light of *Rita v. United States*, 127 S. Ct. 2456, 2462-68 (2007), the issue remains foreclosed. Perez also raises arguments that are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.