

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

May 21, 2008

No. 07-40400
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MARISOL LEIJA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:06-CR-462-2

Before KING, DAVIS and CLEMENT, Circuit Judges.

PER CURIAM:*

Marisol Leija appeals the sentence imposed following her guilty plea to possession with intent to distribute marijuana. She argues that (1) the district court erroneously assessed a two-point adjustment for reckless endangerment during flight pursuant to U.S.S.G. § 3C1.2; (2) this circuit's rulings since *United States v. Booker*, 543 U.S. 220 (2005), have effectively reinstated the mandatory

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Sentencing Guidelines scheme; and (3) her sentence is unreasonable as a result of an improper balancing of the 18 U.S.C. § 3553(a) factors.

According to the presentence report, Leija engaged the police on a high-speed pursuit through a residential area, resulting in the roll-over of the vehicle. Insofar as she raises a “duress defense,” contending that her decision to flee was reasonable, there is no suggestion that she was under an imminent threat of harm at the time of her flight. Under these circumstances, Leija’s flight from the police was not the type of conduct in which a reasonable person would engage, and the district court’s finding that the enhancement was warranted was not clearly erroneous. See *United States v. Jimenez*, 323 F.3d 320, 322-24 (5th Cir. 2003).

Furthermore, Leija has not shown that our precedent has effectively reinstated a mandatory guidelines regime, thereby rendering her sentence unreasonable as a matter of law. See *Gall v. United States*, 128 S. Ct. 586, 594-602 (2007); *Kimbrough v. United States*, 128 S. Ct. 558, 569-76 (2007). Leija also has not shown that a sentence within the advisory guidelines range was unreasonable. See *Gall*, 128 S. Ct. at 597; *Rita v. United States*, 127 S. Ct. 2456, 2462 (2007).

AFFIRMED.