

February 13, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-51624
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TOMMY LARONE COLVIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:05-CR-129-ALL

Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Tommy Larone Colvin appeals the sentence he received after he pleaded guilty to possession with intent to distribute more than five grams of cocaine base. Colvin concedes that he has "waived most of his appellate rights" but goes on to argue that, under United States v. Booker, 543 U.S. 220 (2005), his Sixth Amendment rights were violated and that he "might have" received ineffective assistance of counsel at sentencing.

By failing to argue that his guilty plea was unknowing and involuntary, Colvin has waived such an argument. See FED. R. APP.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

P. 28(a)(9). Insofar as Colvin is bound by the terms of his plea agreement, he has waived his right to bring the instant appeal, and this court will not review his ineffective assistance and Booker arguments. See United States v. Bond, 414 F.3d 542, 544 (5th Cir. 2005).

Colvin's argument that the Government "may have" breached the plea agreement does not amount to plain error given that the Government never agreed to seek a downward departure under U.S.S.G. § 5K1.1. See United States v. Reeves, 255 F.3d 208, 210 (5th Cir. 2001); United States v. Garcia-Bonilla, 11 F.3d 45, 46 (5th Cir. 1993). Moreover, Colvin received a three-level reduction under the terms of the agreement, and the Government dismissed the remaining counts against him.

AFFIRMED.