

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

January 14, 2008

Charles R. Fulbruge III  
Clerk

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No. 06-51421  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MICHAEL ANTHONY HOLLOWAY

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:06-CR-71-ALL

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Before WIENER, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Michael Holloway was convicted of two charges of possessing cocaine and cocaine base with intent to distribute, and the district court sentenced him to serve 262 months in prison and an eight-year term of supervised release. Holloway appeals his sentence. He contends that his sentence is improper because this court's post-Booker<sup>1</sup> rulings have effectively reinstated the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

<sup>1</sup> United States v. Booker, 543 U.S. 220 (2005).

mandatory sentencing guideline regime condemned in Booker. This argument is foreclosed. See *Rita v. United States*, 127 S. Ct. 2456, 2462 (2007). The judgment of the district court is AFFIRMED.

We note that there is an apparent clerical error in the judgment. Although textual portions of the judgment show that Holloway was convicted of two charges, the portion of the judgment listing the counts of conviction lists one count only. A review of the arraignment and sentencing transcripts, as well as the textual portions of the judgment, shows that the omission of Count 2 from that portion of the judgment listing the counts of conviction is a clerical error. Accordingly, this matter is REMANDED TO THE DISTRICT COURT for correction of the clerical error in the judgment pursuant to FED. R. CRIM. P. 36.