

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-5156

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

HERBERT BENAVIDES, a/k/a Erick Gimenez, a/k/a
Marbin Yobani Garcia, a/k/a Erick Jimenez,
a/k/a Enri Chavez, a/k/a Herberth Benavides,
a/k/a Herberth Benavides-Argueta, a/k/a
Eduardo Antonio Argueta-Portillo, a/k/a Henry
Chavez,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Leonie M. Brinkema, District
Judge. (CR-05-307)

Submitted: May 15, 2006

Decided: June 21, 2006

Before MOTZ, TRAXLER, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael S. Nachmanoff, Acting Federal Public Defender, Meghan S.
Skelton, Assistant Federal Public Defender, Alexandria, Virginia,
for Appellant. Kevin R. Gingras, Special Assistant United States
Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Herbert Benavides appeals his thirty-three month prison sentence imposed after his guilty plea to illegal reentry of an aggravated felon in violation of 8 U.S.C. § 1326(a) and (b)(2) (2000). Finding no error, we affirm.

Benavides claims that his sentence was unreasonable. After United States v. Booker, 543 U.S. 220 (2005), a sentencing court is no longer bound by the range prescribed by the sentencing guidelines, but still must calculate and consider the guideline range as well as the factors set forth in 18 U.S.C. § 3553(a) (2000). See United States v. Hughes, 401 F.3d 540, 546 (4th Cir. 2005). We will affirm a post-Booker sentence if it is both reasonable and within the statutorily prescribed range. Id.

The district court properly calculated the sentencing guideline range of thirty-three to forty-one months' imprisonment. As Benavides' sentence is within the properly calculated guideline range, it is presumptively reasonable. United States v. Green, 436 F.3d 449, 457 (4th Cir. 2006). Benavides has not rebutted that presumption as the district court appropriately treated the guidelines as advisory, considered the guideline range, and weighed the relevant factors under 18 U.S.C. § 3553(a) (2000).

We therefore affirm the sentence imposed by the district court. We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED