

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 02-15919  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JUNE 1, 2005 THOMAS K. KAHN CLERK
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D.C. Docket No. 01-00212-CR-T-17

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUSTAVO GOMES RIVAS,  
a.k.a. Gustavo Gomes,  
CRISTINO MENDOZA GOMES,  
a.k.a. Cristino Mendoza,  
PEDRO AGUIRRE ZATISAVAL,  
a.k.a. Pedro Aguirrez,  
JESUS PORTOCARRERO CANA,  
a.k.a. Jesus Portokaero,  
JOSE MURILLO KACHIMBO,  
a.k.a. Jose Akhin Murillo

Defendants-Appellants.

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Appeals from the United States District Court  
for the Middle District of Florida

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(June 1, 2005)

**ON REMAND FROM THE  
SUPREME COURT OF THE UNITED STATES**

Before WILSON and KRAVITCH, Circuit Judges, and GOLDBERG\*, Judge.

PER CURIAM:

Gustavo Gomes Rivas, Cristino Mendoza Gomes, Pedro Aguirre Zatisaval, Jesus Portocarrero, and Jose Murillo Kachimbo were convicted of conspiring to possess and possessing with intent to distribute five kilograms or more of cocaine while aboard a vessel subject to United States jurisdiction, in violation of 46 U.S.C. § 1903 and 21 U.S.C. § 960. Each was sentenced to 235 months imprisonment. On January 20, 2004, we affirmed the convictions and sentences. Notably, none of the defendants-appellants challenged the constitutionality of their sentences before the district court or this court.<sup>1</sup> The Supreme Court granted certiorari, vacated our opinion and remanded the case to us for reconsideration in

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\* Honorable Richard w. Goldberg, United States Court of International Trade, sitting by designation.

<sup>1</sup> We issued our opinion affirming the convictions and sentences before the U.S. Supreme Court decided Booker and Blakely v. Washington, 542 U.S. —, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). Nevertheless, the defendants-appellants could have challenged the constitutionality of their sentences by arguing that any facts that increased their sentences be proven to a jury beyond a reasonable doubt. See United States v. Dowling, No. 04-10464, manuscript op. at 6-10 (11th Cir. Mar. 23, 2005) (explaining the manner in which a defendant may preserve challenges to the constitutionality of a sentence).

light of United States v. Booker, 543 U.S. —, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005).

Because the defendants-appellants did not raise constitutional challenges to the sentences before the district court or this court, any possible claim based on the Supreme Court's recent decisions in Booker has been abandoned. See United States v. Dockery, 401 F.3d 1261, 1262-63 (11th Cir. 2005) (holding that appellant abandoned his Booker claim on appeal by not raising a timely constitutional challenge to his sentence in his initial brief).

\_\_\_\_ Accordingly, we **AFFIRM**.