

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued March 29, 2005
Decided March 15, 2006

Before

Hon. RICHARD D. CUDAHY, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 04-2776

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RUBEN HERRERA-HERRERA,
Defendant-Appellant.

Appeal from the United States
District Court for the
Southern District of Illinois.

No. 03 CR 40084-001-JLF

James L. Foreman, *Judge.*

O R D E R

Ruben Herrera-Herrera pleaded guilty under an open plea to one count of being in the United States unlawfully after deportation in violation of 8 U.S.C. § 1326(a). Relying on the Sentencing Guidelines, the district court sentenced him to 30 months' imprisonment based in part on a prior felony conviction. We ordered a limited remand of Herrera-Herrera's sentence in accordance with *United States v. Booker*, 125 S. Ct. 738 (2005), and *United States v. Paladino*, 401 F.3d 471, 483 (7th Cir. 2005), so that the district court could determine whether it believed Herrera-Herrera's sentence remains appropriate now that *Booker* has relegated the Sentencing Guidelines to advisory status.

The district court has replied that, now knowing that the Guidelines are not mandatory, it would reimpose the same sentence. We invited both parties to file any arguments concerning the appropriate disposition of this case in light of the district court's decision. Herrera-Herrera has filed a statement advising that he has completed his term of incarceration and wishes voluntarily to dismiss his appeal pursuant to FED. R. APP. P. 42(b). Counsel notes that the term of supervision that the court could impose remains the same regardless of the outcome of the appeal.

We agree with Herrera-Herrera that dismissal is appropriate under these circumstances. This appeal is therefore DISMISSED.