

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 06-4547

UNITED STATES OF AMERICA

vs.

EDUARDO MARTINEZ-TULL,
Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Crim. No. 01-cr-00235)
District Judge: Honorable Berle M. Schiller

Submitted For Possible Summary Action Under Third Circuit LAR 27.4 and I.O.P. 10.6
March 22, 2007

Before: MCKEE, FUENTES and WEIS, CIRCUIT JUDGES

(Filed: April 17, 2007)

OPINION

PER CURIAM.

Eduardo Martinez-Tull appeals the District Court’s order denying his “Motion Pursuant to Rule 60(b)(6).” In August 2001, Martinez-Tull pled guilty to distributing cocaine base and was subsequently sentenced in February 2002 to 120

months in prison. He did not appeal his conviction or sentence. On August 3, 2006, Martinez-Tull filed a “Motion pursuant to Rule 60(b)(6).” He argued that he was denied the right to a direct appeal and that there had been an intervening change in the law concerning the sentencing guidelines. The District Court denied the motion. It stated that there is no Rule 60(b) right to resentencing under the Federal Rules of Criminal Procedure and the Supreme Court’s decision in United States v. Booker, 125 S.Ct. 738 (2005) is not retroactively applicable.

The District Court did not err in denying Martinez-Tull’s Rule 60(b) motion. It appears that Martinez-Tull intended to proceed under Rule 60(b) of the Federal Rules of Civil Procedure; however, those rules apply to civil cases, not criminal cases. A motion filed pursuant to 28 U.S.C. § 2255 is the appropriate vehicle for the claims Martinez-Tull seeks to raise. We express no opinion over the merits of such a motion.

Summary action is appropriate if there is no substantial question presented in the appeal. See Third Circuit LAR 27.4. For the above reasons, as well as those set forth by the District Court, we will summarily affirm the District Court’s order. See Third Circuit I.O.P. 10.6.