

FILED

December 7, 2005

Charles R. Fulbruge III
Clerk

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 05-30028
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-

Appellee,

versus

STEVEN JOSEPH GUIDRY,

Defendant-

Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:04-CR-60049

Before BARKSDALE, STEWART and CLEMENT, Circuit Judges.

PER CURIAM:*

Steven Joseph Guidry was convicted following a guilty plea to one count of possessing stolen firearms, in violation of 18 U.S.C. § 922(j). He argues that the district court erred by imposing a sentence under a mandatory federal sentencing guideline scheme, which was held to be unconstitutional in United States v. Booker, 125 S. Ct. 738 (2005). The Government concedes that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the issue was preserved in the district court, that the district court committed error, and that it cannot prove that the error was harmless. In light of the foregoing, we VACATE the district court's sentence and REMAND for resentencing in accordance with Booker.