

December 17, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-21166  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

QUINTON TAVARES KOONTZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:03-CR-106-1  
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Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:\*

Quinton Tavares Koontz ("Koontz") appeals his sentences for possession of a firearm by a felon, using or carrying a firearm during and in relation to a drug trafficking crime, possession with intent to distribute cocaine, and possession with intent to distribute five grams or more of cocaine base. Koontz argues that under Blakely v. Washington, 124 S. Ct. 2531 (2004), the district court should have assigned the burden of proof regarding a reduction for acceptance of responsibility to the Government,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

pursuant to U.S.S.G. § 3E1.1(b). He thus contends that the district court erred in not giving him an additional one-level decrease in his offense level under U.S.S.G. § 3E1.1(b) for acceptance of responsibility. He argues that this court should reverse his sentences and remand his case for resentencing.

Koontz does not specifically argue that the district court erred in finding that he was not eligible for the additional one-level decrease to his offense level under U.S.S.G. § 3E1.1(b). Rather, his entire argument relates to who bears the burden of proof for a reduction under U.S.S.G. § 3E1.1(b) in the wake of Blakely. Koontz's reliance on Blakely is misplaced because this court held in United States v. Pineiro, 377 F.3d 464, 465-66 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263), that Blakely does not apply to the United States Sentencing Guidelines. Accordingly, Koontz's argument has no merit and his sentence is AFFIRMED. Koontz's motion to substitute counsel is DENIED.