

June 22, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-30394
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OWEN HUGH ROBERTSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:03-CR-50067-ALL

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Owen Hugh Robertson appeals the sentence imposed following his guilty-plea conviction for possession of a firearm by a convicted felon. For the first time on appeal, Robertson asserts that the application of an enhancement to his sentence for his possession or use of a firearm in connection with the second-degree murder of his wife was unconstitutional under Blakely v. Washington, 124 S. Ct. 2531 (2004). Neither party has addressed the effect of the Supreme Court's recent decision in United States v. Booker, 125 S. Ct. 738 (2005), which held that Blakely

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

was applicable to the federal sentencing guidelines. However, because Robertson did raise the Sixth Amendment issue in his opening brief, we will consider whether his sentence must be vacated under Booker.

Because Robertson did not raise this issue below, we review for plain error only. See United States v. Mares, 402 F.3d 511, 520 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005) (No. 04-9517). Robertson has not demonstrated that the district court would have imposed a different or a lesser sentence if it had been guided by the Booker holding. Therefore, Robertson has not shown that his sentence is plainly erroneous. See id. at 522.

AFFIRMED.