

May 2, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-11477
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TERRY WAYNE KING, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:04-CR-107-2-A

Before DeMOSS, STEWART and PRADO, Circuit Judges.

PER CURIAM:*

Terry Wayne King, Jr., appeals the sentence imposed following his conviction for bank larceny. He argues that the district court erred in denying a reduction in his offense level for acceptance of responsibility and that his sentence is unconstitutional under United States v. Booker, 543 U.S. 220 (2005).

Reviewing the district court's refusal to reduce King's offense level under a highly deferential standard, we hold that the court did not err in denying King's request for a reduction

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

for acceptance of responsibility. See United States v. Washington, 340 F.3d 222, 227 (5th Cir. 2003). Because King denied relevant conduct at the sentencing hearing, the district court's decision was not "without foundation." See id.

King was sentenced pursuant to a mandatory guidelines scheme held unconstitutional in Booker. The Government concedes that the this issue was preserved through King's objection in the district court based on Blakely v. Washington, 542 U.S. 296 (2004), and that it cannot show that the error was harmless beyond a reasonable doubt. See United States v. Walters, 418 F.3d 461, 464 (5th Cir. 2005). Accordingly, we VACATE King's sentence and REMAND to the district court for resentencing.