

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-5064

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TERRY NATHANIAL KEITH,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Richard D. Bennett, District Judge. (CR-03-568-RDB)

Submitted: April 8, 2005

Decided: April 26, 2005

Before TRAXLER, KING, and GREGORY, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Ricardo Daniel Zwaig, Assistant Federal Public Defender, Ellicott City, Maryland, for Appellant. Thomas Michael DiBiagio, United States Attorney, Harry Mason Gruber, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Terry Nathaniel Keith pled guilty on August 26, 2004, to possession of a firearm after conviction of a felony, in violation of 18 U.S.C. § 922(g)(1) (2000). The district court sentenced Keith on November 19, 2004, over his objection based on Blakely v. Washington, 124 S. Ct. 2531 (2004), to fifty-seven months of imprisonment to be followed by three years of supervised release. The district court also specified an alternative sentence of forty-eight months of imprisonment pursuant to this court's recommendation in United States v. Hammoud, 378 F.3d 426 (4th Cir. 2004) (order), opinion issued by 381 F.3d 316, 353-54 (4th Cir. 2004) (en banc), cert. granted and judgment vacated, 125 S. Ct. 1051 (2005).

Keith appealed, challenging the constitutionality of the federal sentencing scheme in light of the Supreme Court's decision in Blakely v. Washington, 124 S. Ct. 2531 (2004).^{*} The case was held in abeyance pending the decision in United States v. Booker, 125 S. Ct. 738 (2005). That opinion has now issued, and applies the Court's reasoning in Blakely to the federal sentencing guidelines.

Keith now moves for an expedited remand of this case to the district court to allow implementation of the alternative

^{*}He also challenged the amount of credit given him for time spent in state custody, but has now withdrawn that claim as premature.

sentence previously announced by the district court, a motion which is unopposed by the Government. We grant the motion to allow the district court to reconsider Keith's sentence in light of the Booker decision. Therefore, we affirm his conviction, vacate the sentence imposed by the district court, and remand for reconsideration of the sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART,
VACATED IN PART, AND REMANDED