

August 19, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-11016
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHARON SURLLES JOHNSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:03-CR-419-ALL-H

Before JONES, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Sharon Surlles Johnson appeals her sentence for fraudulent use of a social security number in violation of 42 U.S.C. § 408(a)(7)(B). She argues that the district court committed error under United States v. Booker, 125 S. Ct. 738 (2005), when it added seven offense levels to her base offense level for the amount of loss attributable to her offense conduct.

Johnson preserved this issue by arguing that her sentence violated Blakely v. Washington, 542 U.S. 296 (2004). See United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States v. Akpan, 407 F.3d 360, 376 (5th Cir. 2005). Because it sentenced Johnson based on conduct that was neither admitted by Johnson nor proven beyond a reasonable doubt to a jury, the district court committed error under Booker, 125 S. Ct. at 756.

The Government argues that the record demonstrates beyond a reasonable doubt that the district court would not have sentenced Johnson differently had it acted under advisory Guidelines. The Government's arguments do not meet the "arduous" burden of demonstrating "beyond a reasonable doubt that the Sixth Amendment Booker error did not affect the sentence." See United States v. Pineiro, 410 F.3d 282, 284-85, 287 (5th Cir. 2005). Accordingly, Johnson's sentence is VACATED, and the case is REMANDED FOR RESENTENCING. See id. at 285-87.