

February 27, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-20749  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NIKIA FRANKLIN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:04-CR-190-ALL  
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Before SMITH, GARZA, and PRADO, Circuit Judges.

PER CURIAM:\*

Nikia Franklin appeals her sentence following her guilty-plea conviction for being a felon in possession of a firearm. Franklin argues that the district court committed reversible error when it sentenced her based on facts not admitted by her.<sup>1</sup> Although the Government argues that there was no Sixth Amendment violation, it concedes that the district court erred by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

<sup>1</sup> Franklin also complains in passing that the district court relied on facts not charged in the indictment. To the extent that she raises a Fifth Amendment challenge, that argument is waived as inadequately briefed. See FED. R. APP. P. 28(a).

sentencing Franklin under the mandatory guidelines scheme held unconstitutional in United States v. Booker, 125 S. Ct. 738 (2005). The Government also concedes that Franklin preserved this issue through her objection in the district court based on Blakely v. Washington, 542 U.S. 296 (2004), and that it cannot show that this error was harmless beyond a reasonable doubt. See United States v. Walters, 418 F.3d 461, 464 (5th Cir. 2005). Accordingly, we VACATE Franklin's sentence and REMAND to the district court for resentencing in accordance with Booker. See United States v. Garza, 429 F.3d 165, 170 (5th Cir. 2005).