

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted March 17, 2005
Decided April 19, 2005

Before

Hon. KENNETH F. RIPPLE, *Circuit Judge*

Hon. DANIEL A. MANION, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

Nos. 03-3789 & 03-3752

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
Cross-Appellant,

Appeals from the United States
District Court for the Northern
District of Illinois, Eastern Division.

v.

No. 02 CR 1086

BRIAN KELLER,
Defendant-Appellant,
Cross-Appellee.

James B. Moran, Judge.

ORDER

This matter comes before us upon remand from the Supreme Court of the United States for reconsideration in light of *United States v. Booker*, 125 S. Ct. 738 (2005). Brian Keller was convicted of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Mr. Keller appealed his conviction. The Government cross-appealed the district court's grant of a downward departure to Mr. Keller's sentence under § 5K2.12 of the United States Sentencing Guidelines. We affirmed Mr. Keller's conviction but vacated his sentence and remanded for resentencing. On January 25, 2005, the Supreme Court granted Mr. Keller's petition for a writ of certiorari, vacated this court's judgment and remanded the case to us for further consideration in light of *Booker*.

Both parties now request that Mr. Keller's sentence be vacated and remanded for resentencing. We believe that such a course of action is appropriate. Accordingly, we affirm Mr. Keller's conviction, vacate his sentence due to the district court's erroneous grant of a downward departure, *see United States v. Keller*, 376 F.3d 713, 717-20 (7th Cir. 2004), *vacated on other grounds*, 125 S. Ct. 1061 (2005), and remand to the district court for resentencing consistent with this order and the Supreme Court's decision in *Booker*.

IT IS SO ORDERED