

**UNPUBLISHED ORDER**  
Not to be cited per Circuit Rule 53

# United States Court of Appeals

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

Submitted June 23, 2005\*  
Decided July 11, 2005

## **Before**

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 04-2739

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

BABAJIDE SOBITAN,  
*Defendant-Appellant.*

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

No. 03 CR 450

John W. Darrah,  
*Judge.*

## **O R D E R**

Babajide Sobitan was convicted of attempting to reenter the United States without authorization after having been deported, 8 U.S.C. § 1326(a), and was sentenced to 97 months' imprisonment. He argues under *United States v. Booker*, 125 S. Ct. 738 (2005), that the district court improperly treated the sentencing guidelines as mandatory and impermissibly increased his offense level based on

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\*After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).

facts found only by a preponderance of the evidence. Sobitan preserved these arguments by objecting at sentencing, and thus our review is plenary. *United States v. Schlifer*, 403 F.3d 849, 854 (7th Cir. 2005); *United States v. Hollis*, 230 F.3d 955, 958-59 (7th Cir. 2000); *United States v. Paz*, 405 F.3d 946, 948-49 (11th Cir. 2005). Thus we must vacate Sobitan's sentence unless the government can establish that the error was harmless, *Schlifer*, 403 F.3d at 854, a burden that the government concedes it cannot meet here. Accordingly, we VACATE Sobitan's sentence and REMAND for resentencing in light of *Booker*. *See id.*