

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

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

August 30, 2005

Before

Hon. THOMAS E. FAIRCHILD, *Circuit Judge*

Hon. RICHARD A. POSNER, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

No. 04-1826

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DERRICK GARDNER,
Defendant-Appellant.

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

No. 03 CR 428

Ronald A. Guzman,
Judge.

O R D E R

On limited remand under *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005), the district court concluded that “it would have imposed a different sentence had it known the guidelines were merely advisory.” The parties filed memoranda in response to our written invitation and agree that Gardner’s sentence should be vacated and the case remanded for resentencing. Accordingly, we **VACATE** Gardner’s sentence and **REMAND** for resentencing in light of *United States v. Booker*, 125 S. Ct. 738 (2005).