

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

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

Submitted August 31, 2005*

Decided September 2, 2005

Before

Hon. RICHARD D. CUDAHY, *Circuit Judge*

Hon. DANIEL A. MANION, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

No. 04-4021

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHASKA J. CARRILLO,
Defendant-Appellant.

Appeal from the United States
District Court for the Western District
of Wisconsin

No. 04 CR 110

Barbara B. Crabb,
Chief Judge.

O R D E R

Chaska Carrillo pleaded guilty to distributing cocaine base in violation of 21 U.S.C. § 841(a)(1) and was sentenced to 151 months' imprisonment and three years' supervised release. He now argues that he is entitled to resentencing in light of *United States v. Booker*, 125 S. Ct. 738 (2005), and *United States v. Schlifer*, 403 F.3d 849 (2005). Like the appellant in *Schlifer*, Carrillo argued in the district court that increasing his offense level under U.S.S.G. § 4B1.1 (establishing elevated offense levels for "career offenders") without submitting the matter to a jury violated his rights under the Sixth Amendment. We rejected that argument on the

* 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).

merits in *Schlifer*, 403 F.3d at 853, but nonetheless accepted it as sufficient to “preserve” the appellant’s right to challenge his sentence under the remedial holding in *Booker*, *id.* at 854.

There is error in every sentence imposed under the old mandatory guidelines regime. *Schlifer*, 403 F.3d at 853. Because Carrillo adequately preserved an objection, we must vacate the sentence unless the government can show that the error was harmless. *Id.* at 854. The government concedes that it cannot meet that burden. Accordingly, we VACATE Carrillo’s sentence and REMAND the case for resentencing.