

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 28, 2005
Decided October 28, 2005

Before

Hon. JOHN L. COFFEY, Circuit Judge

Hon. FRAHK H. EASTERBROOK, Circuit Judge

Hon. ANN CLAIRE WILLIAMS, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 04-3733 **v.**

CURTIS A. KING,
Defendant-Appellant.

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

No. 04 CR 78
John C. Shabaz, *Judge.*

Order

The defendant's sentence was enhanced because of a prior conviction. His sole contention on appeal is that this conviction had to be alleged in the indictment and proved to a jury's satisfaction. He concedes that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), rejected this precise contention but contends that *Almendarez-Torres* is no longer good law. This argument is not one that we are free to entertain, however; only the Supreme Court can decide when one of its decisions will be overruled. The Justices continue to recite the *Almendarez-Torres* limitation on the approach adopted by *Apprendi v. New Jersey*, 530 U.S. 466 (2000). See *United States v. Booker*, 125 S. Ct. 738, 756 (2005): "Any fact (*other than a prior conviction*) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a guilty verdict must be admitted by the defendant or

proved to a jury beyond a reasonable doubt." (Emphasis added.) Defendant's counsel therefore raises the contention only to preserve it for presentation to the Supreme Court. That task has been accomplished, and we send the case on its way.

Affirmed