

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

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

November 21, 2005

Before

Hon. JOEL M. FLAUM, *Chief Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

Nos. 04-1441 & 04-1442

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DESMOND RAY KING and
PAUL MICHAEL BURGESS,
Defendants-Appellants.

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

No. 03 CR 547

Elaine E. Bucklo, *Judge.*

O R D E R

Desmond R. King and Paul M. Burgess both pled guilty to bank robbery (21 U.S.C. § 2113(a) and (d)) and using a firearm during the bank robbery (18 U.S.C. § 924(c)). In sentencing the defendants, Judge Elaine E. Bucklo treated the guidelines as mandatory, which was, of course, consistent with the law as it existed before United States v. Booker, 125 S. Ct. 738 (2005). Following Booker, we ordered a limited remand, pursuant to United States v. Paladino, 401 F.3d 471 (7th Cir. 2005), requiring that the judge inform us whether she would have imposed the same sentences had she known the guidelines were advisory only.

In response to our order, Judge Bucklo stated in part:

I am unable at this time to say that I would have imposed the same sentence if I had known the Sentencing Guidelines were merely advisory. I therefore desire to resentence the defendants.

We invited the parties to file documents regarding the appropriate disposition of the case. Despite Judge Bucklo's statement, the government at first opposed resentencing. However, in light of our decision in United States v. Askew, 417 F.3d 648 (7th Cir. 2005), construing identical language as sufficient to establish plain error at sentencing, the government has now conceded that King and Burgess should be resentenced. Accordingly, the sentences imposed on Desmond R. King and Paul M. Burgess are VACATED and the case is REMANDED to the district court for resentencing.

SO ORDERED.