

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

March 3, 2006

Before

Hon. JOHN L. COFFEY, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

No. 04-3985

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

VICTOR NAJERA,
Defendant-Appellant.

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

No. 00 CR 274

Matthew F. Kennelly,
Judge.

O R D E R

Victor Najera pleaded guilty to conspiracy to distribute cocaine. *See* 21 U.S.C. § 846. In sentencing him, Judge Matthew F. Kennelly treated the guidelines as mandatory in accordance with the law as it existed before *United States v. Booker*, 543 U.S. 220 (2005). Following *Booker*, we ordered a limited remand, pursuant to *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005), so the judge could inform us whether he would have sentenced Najera differently had he known the sentencing guidelines were merely advisory.

In response to our order, Judge Kennelly stated that he would have imposed a lower sentence. We invited the parties to file position statements concerning the appropriate disposition of the case. Only Najera has responded, and he concurs with the district court that resentencing is appropriate. Accordingly, IT IS ORDERED that Najera's sentence is VACATED, and the case is REMANDED to

the district court for resentencing.