

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

April 12, 2006

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

Hon. RICHARD D. CUDAHY, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 03-2337

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LISA TONEY,
Defendant-Appellant.

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

No. 00 CR 143-3

Charles R. Norgle, Sr.,
Judge.

O R D E R

Lisa Toney and her boyfriend used her husband's name and identifying information to commit fraud. He found out, so they blew him up with a mail bomb, injuring another man in the process. Toney was convicted of conspiracy to use fraudulent identification, *see* 18 U.S.C. § 1028(f); fraudulent use of an access device, *see id.* § 1029(a)(2); mail theft, *see id.* § 1708; and conspiracy to use explosives in commission of a felony resulting in death, *see id.* § 844(n), (d). The district court imposed multiple concurrent terms of imprisonment, the longest of which was life.

Toney appealed, arguing that the district court plainly erred by applying the sentencing guidelines as mandatory. *See United States v. Booker*, 543 U.S. 220 (2005); *United States v. Paladino*, 401 F.3d 471, 481 (7th Cir. 2005). We asked the judge whether he would have imposed a lower sentence if he had known that the

guidelines were advisory. *See Paladino*, 401 F.3d at 483–84. He answered yes. Therefore, we VACATE Toney’s sentence and REMAND for resentencing.