

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

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

February 4, 2008

Before

Hon. RICHARD A. POSNER, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 04-2364

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JAMES FRITH, JR.,
Defendant-Appellant.

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

No. 01 CR 502

Rebecca R. Pallmeyer,
Judge.

O R D E R

On August 29, 2006, this court ordered a limited remand so the district court could state on the record whether the sentence remains appropriate now that *United States v. Booker*, 543 U.S. 220 (2005), has limited the guidelines to advisory status. *See United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005).

The district judge has now replied that she cannot conclude that she would have imposed the same sentence on Frith at the time of his original sentencing had she known that the guidelines were advisory and not binding. In reply to our invitation to comment on the district court's *Paladino* response, the United States agrees that resentencing is appropriate. The defendant did not file a position statement. Accordingly, pursuant to *Paladino*, we VACATE Frith's sentence and REMAND to the district court for resentencing.