

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-2183

United States of America,

Appellee,

v.

Robert Charles Zimmerman,

Appellant.

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Appeal from the United States
District Court for the Southern
District of Iowa.

[UNPUBLISHED]

Submitted: March 1, 2005

Filed: June 6, 2005

Before MORRIS SHEPPARD ARNOLD, HEANEY, and RILEY, Circuit Judges.

PER CURIAM.

The Supreme Court of the United States granted certiorari in this case, vacated our judgment, and remanded the case to us for reconsideration in light of *United States v. Booker*, 125 S. Ct. 738 (2005). See *Zimmerman v. United States*, 125 S. Ct. 1021 (2005), *granting cert. and vacating judgment in United States v. Zimmerman*, No. 03-2183, 2004 WL 406094 (March 5, 2004) (unpublished per curiam). In *Booker*, 125 S. Ct. at 749-51, the Court held that sentence enhancements based solely on facts found by a court under mandatory federal sentencing guidelines violate the sixth amendment, which the Court then remedied by making the sentencing guidelines advisory rather than mandatory, *id.* at 764.

We have examined the relevant record and conclude that the defendant, Robert Zimmerman, did not preserve a *Booker* issue, and that he is not entitled to plain-error relief because he cannot show that his substantial rights were affected, *see United States v. Pirani*, 406 F.3d 543, 550-53 (8th Cir. 2005) (en banc). We therefore conclude that *Booker* did not affect our previous opinion in this case. Accordingly we reinstate our prior opinion and again affirm the sentence imposed by the district court.¹

¹The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.