

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 03-3376

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United States of America,

Appellee,

v.

Jacob A. Kanatzar,

Appellant.

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Appeal from the United States  
District Court for the Western  
District of Missouri.

[UNPUBLISHED]

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Submitted: March 3, 2005

Filed: June 20, 2005

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Before WOLLMAN, RICHARD S. ARNOLD,<sup>1</sup> MORRIS SHEPPARD ARNOLD,  
Circuit Judges.

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MORRIS SHEPPARD ARNOLD, Circuit Judge.

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 *Kanatzar v. United States*, 125 S. Ct. 1010 (2005), *granting cert. and vacating the judgment in United States v. Kanatzar*, 370 F.3d 810 (8th Cir. 2004). In *Booker*, 125 S. Ct. at 749-51, the Court held that sentence enhancements based solely on facts found by a court under mandatory

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<sup>1</sup>The Honorable Richard S. Arnold died on September 23, 2004. This opinion is being filed by the remaining judges of the panel pursuant to 8th Cir. R. 47E.

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, Jacob Kanatzar, 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 judgment of the district court.<sup>2</sup>

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<sup>2</sup>The Honorable Fernando J. Gaitan, Jr., United States District Judge for the Western District of Missouri.