

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3012

United States of America,	*	
	*	
Plaintiff-Appellee,	*	
	*	Appeal from the United States
v.	*	District Court for the
	*	District of Nebraska.
Drewmaine Brown,	*	
	*	[UNPUBLISHED]
Defendant-Appellant.	*	

Submitted: March 15, 2005
Filed: June 27, 2005

Before WOLLMAN, LAY, and HANSEN, Circuit Judges.

PER CURIAM.

The defendant in this case was sentenced prior to the United States Supreme Court decision in United States v. Booker, 125 S.Ct. 738 (2005). At the time of sentencing, the defendant raised and preserved error as to the constitutionality of the federal sentencing guidelines. During the sentencing hearing, the district court stated that if the federal sentencing regime were to change after Booker, the defendant could file a motion asking the district court to reconsider his sentence. It then sentenced the defendant to the minimum possible sentence under the applicable sentencing guidelines. Accordingly, we cannot say that the error in this case was harmless. We therefore vacate and remand for resentencing pursuant to United States v. Booker,

125 S.Ct. 738 (2005). See United States v. Haidley, 400 F.3d 642, 644-46 (8th Cir. 2005).
