

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3044

United States of America,

Appellee,

v.

Frank Robinson,

Appellant.

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* Appeal from the United States

* District Court for the

* Western District of Missouri

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* [UNPUBLISHED]

Submitted: May 13, 2005

Filed: July 15, 2005

Before MELLOY, McMILLIAN, and GRUENDER, Circuit Judges.

PER CURIAM.

Frank Robinson appeals the 84-month prison sentence the district court imposed after he pleaded guilty to being a felon in possession of a firearm. Robinson preserved at sentencing the question of the constitutionality of the federal Sentencing Guidelines after Blakely v. Washington, 124 S. Ct. 2531 (2004). For purposes of our analysis we assume that this case does not raise a Sixth Amendment issue, and we thus review for harmless error. See United States v. Booker, 125 S. Ct. 738, 769 (2005). It is clear from the sentencing transcript that the district court made a conscious decision to sentence Robinson at the bottom of the Guidelines range, commenting that it felt even this sentence was too harsh. Given this record, we are

left with “grave doubt” that the error of sentencing Robinson under a mandatory Guidelines scheme was harmless. See United States v. Haidley, 400 F.3d 642, 645 (8th Cir. 2005). Accordingly, we remand for resentencing.
