

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

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No. 05-1168

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United States of America,	*	
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Appellee,	*	Appeal from the United States
	*	District Court for the
v.	*	District of Minnesota.
	*	
Lazaro Despaigne Borrero,	*	[UNPUBLISHED]
	*	
Appellant.	*	

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Submitted: August 11, 2005  
Filed: October 11, 2005

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Before COLLOTON, HANSEN, and BENTON, Circuit Judges.

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PER CURIAM.

Lazaro Borrero appeals the sentence the district court imposed after he was convicted of possessing cocaine base with intent to distribute. For reversal, he argues that his sentence, imposed under a mandatory Guideline regime, violates *United States v. Booker*, 125 S. Ct. 738 (2005).

The district court erred in sentencing Borrero under a mandatory Guidelines regime, *see id.* at 756-57 (holding Guidelines to be only advisory), and Borrero preserved this non-constitutional error at sentencing. We thus review for harmless error. *See id.* at 769. We are left with grave doubt as to whether the error had

"substantial influence" on the outcome of the proceeding. *See Kotteakos v. United States*, 328 U.S. 750, 765 (1946). Borrero was sentenced at the bottom of the applicable Guidelines range, and the district court's comments suggest that the sentence might have been different had the Guidelines been treated as advisory. *See United States v. Haidley*, 400 F.3d 642, 644-45 (8th Cir. 2005). Accordingly, we remand for resentencing.

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