

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-3062

United States of America,

Plaintiff - Appellee,

v.

Matthew Andrew Key,

Defendant - Appellant.

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

[UNPUBLISHED]

Submitted: February 15, 2006

Filed: March 31, 2006

Before RILEY, HEANEY, and MELLOY, Circuit Judges.

PER CURIAM.

Matthew Andrew Key pled guilty to possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1). He received a sentence of 262 months and brought a timely appeal of his sentence. Following oral argument, Key filed a motion for remand, alleging that the trial court committed plain error when it found him to be a career offender for purposes of United States Sentencing Guidelines § 4B1.1. In response, the government conceded that one of the convictions used to qualify Key as a career offender, his 1997 Missouri conviction

for Trafficking Drugs, Second Degree, does not satisfy the requirements of U.S.S.G. § 4B1.2(b). Therefore, Key does not have “at least two prior felony convictions of either a crime of violence or a controlled substance offense,” and Key does not qualify as a career offender for purposes of U.S.S.G. § 4B1.1.

Accordingly, we vacate Key’s sentence and remand for resentencing.
