

Bromley v. United States 05-CV-103-SM 04/05/05
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Steven L. Bromley,
Petitioner,

v.

Civil No. 05-cv-103-SM
Opinion No. 2005 DNH 056

United States of America,
Respondent

O R D E R

Petitioner pled guilty to one count of making a false statement in violation of 18 U.S.C. § 1001. Sentence was imposed on December 16, 2003, in accordance with the provisions of the United States Sentencing Guidelines. Petitioner did not object to the constitutionality of the guidelines' mandatory character at sentencing, but did so on direct appeal. The United States Court of Appeals for the First Circuit affirmed petitioner's conviction and sentence on October 22, 2004, noting that Blakely v. Washington, 124 S.Ct. 2531 (2004) did not, strictly speaking, invalidate the federal guidelines, and no plain error could be ascribed to a sentence consistent with then controlling precedent.

Now that the Supreme Court has construed the federal guidelines to be advisory rather than mandatory, in United States v. Booker, 15 S.Ct. 738 (2005), petitioner once again seeks to challenge his guideline sentence. But, the new rule announced in United States v. Booker, 125 S.Ct. 738 (2005), is procedural rather than substantive in nature. Moreover, the rule does not qualify as a "watershed rule" that implicates "the fundamental fairness and accuracy of the criminal proceedings." Saffle v. Parks, 494 U.S. 484, 495 (1990). Accordingly, Booker does not apply retroactively to final convictions, like petitioner's. See McReynolds v. United States, 2005 WL 237642 (7th Cir. 2005); Schriro v. Summerlin, 124 S.Ct. 2519, 2523-26 (2004); Sepulveda v. United States 330 F.3d 55, 63 (1st Cir. 2003).

The petition is denied.

SO ORDERED.

Steven J. McAuliffe
Chief Judge

April 5, 2005

cc: Steven L. Bromley, pro se