

United States Court of Appeals For the First Circuit

No. 02-1850

UNITED STATES
Appellee

v.

ROBERT CHAMPAGNE
Defendant - Appellant

Before

Circuit Judge Lynch, Circuit Judge Lipez, and Senior Circuit
Judge Siler.

ORDER OF COURT

Entered: June 21, 2005

This case has been remanded to us from the Supreme Court for reconsideration in light of United States v. Booker, 125 S. Ct. 738 (2005). In United States v. Champagne, 362 F.3d 60 (1st Cir. 2004), we affirmed Champagne's conviction and sentence. We rejected his arguments that the district court erred in denying his motion to suppress items police found in his hotel room, finding that exigent circumstances, the emergency exception doctrine, and the Terry doctrine, see Terry v. Ohio, 392 U.S. 1 (1968), provided a reasonable basis for the warrantless search, and that the district court erred in enhancing his sentence for possession of a dangerous weapon. We note that Booker only affects the sentencing aspect of our earlier opinion.

After the Supreme Court vacated judgment and remanded the case to us, we invited the parties to submit supplemental briefing on the issue of whether the case should be remanded to the district court under Booker for resentencing. Having not preserved the claim of error, the burden is on Champagne

to show a reasonable probability that the district court would have given him a lower sentence had it treated the Guidelines as advisory, rather than mandatory. See United States v. Heldeman, 402 F.3d 220 (1st Cir. 2005); United States v. Antonakopoulos, 399 F.3d 68 (1st Cir. 2005). In attempting to do so, he argues that factors such as his age, depression as a result of childhood abuse, his history of drug abuse, and the fact that he has been steadily employed in his adult life suffice to create such a reasonable probability. Each of these factors was available to the district court in the Presentence Report when it sentenced Champagne initially. While the district judge did sentence Champagne at the low end of the Guidelines range, which was recommended by the government, he stated that in doing so, "I believe that a sentence at that level adequately punishes the defendant for his criminal conduct and takes into account his Criminal History Category." Champagne has not carried his burden of showing a reasonable probability that he would have received a lower sentence if sentenced under an advisory Guidelines regime. Therefore, we direct entry of judgment affirming both the conviction and sentence.

By the Court:

Richard Cushing Donovan, Clerk.

By: _____
Operations Manager.

cc: Terry L. Ollila, AUSA
Mark E. Howard, AUSA
Joshua L. Gordon, Esq.