

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3010

United States of America,	*	
	*	
Plaintiff - Appellee,	*	
	*	Appeal from the United States
v.	*	District Court for the
	*	District of Nebraska
James Toelle,	*	
	*	[UNPUBLISHED]
Defendant - Appellant.	*	

Submitted: February 15, 2005
Filed: March 16, 2005 (Corrected March 17, 2005)

Before MELLOY, HEANEY, and FAGG, Circuit Judges.

PER CURIAM.

The defendant in this case was sentenced prior to the United States Supreme Court decision in United States v. Booker, 125 S.Ct. 738 (2005). The defendant raised and preserved error as to the constitutionality of the federal sentencing guidelines at the time of sentencing. The defendant was also sentenced to the minimum possible sentence under the applicable federal sentencing guidelines. Accordingly, we cannot say that the error in this case was harmless. We therefore vacate the sentence and remand for resentencing pursuant to United States v. Booker, 125 S.Ct. 738 (2005). See, United States v. Haidley, No. 04-3312 (filed March 16, 2005).