

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 04-11715  
Non-Argument Calendar

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<p><b>FILED</b> U.S. COURT OF APPEALS ELEVENTH CIRCUIT June 8, 2005 THOMAS K. KAHN CLERK</p>
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D.C. Docket No. 03-00196-CR-J-25HTS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY BANKS,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Middle District of Florida

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**(June 8, 2005)**

**ON REMAND FROM THE SUPREME COURT  
OF THE UNITED STATES**

Before BLACK, PRYOR and KRAVITCH, Circuit Judges.

PER CURIAM:

Larry Banks was convicted of possession of firearms by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and sentenced as an armed career criminal under U.S.S.G. § 4B1.4 and 18 U.S.C. § 924(e). On November 16, 2004, we affirmed his conviction and sentence. Notably, Banks did not challenge the constitutionality of his sentence under Blakely v. Washington, 542 U.S. —, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004) before the district court or this court. Nor did he move for rehearing. The Supreme Court granted certiorari, vacated our opinion and remanded the case to us for reconsideration in light of United States v. Booker, 543 U.S. —, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005).

Because Banks did not raise a constitutional challenge to his sentence before the district court or this court, any possible claim based on the Supreme Court's recent decisions in Booker and Blakely has been abandoned. See United States v. Dockery, 401 F.3d 1261, 1262-63 (11th Cir. 2005) (holding that appellant abandoned his Booker claim on appeal by not raising a timely constitutional challenge to his sentence in his initial brief).

\_\_\_\_ Accordingly, we AFFIRM.