

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
AUGUST 23, 2004  
THOMAS K. KAHN  
CLERK

\_\_\_\_\_  
No. 03-16001

\_\_\_\_\_  
D.C. Docket No. 02-00070-CR-3-RV

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GREGORY WADE HEMBREE,

Defendant-Appellant.

\_\_\_\_\_  
Appeal from the United States District Court for the  
Northern District of Florida

\_\_\_\_\_  
(AUGUST 23, 2004)

Before DUBINA, BLACK and PRYOR, Circuit Judges.

BY THE COURT:

On July 23, 2004, this court denied Appellant's motion for leave to file a supplemental brief pursuant to *Blakely v. Washington*, \_\_\_ U.S. \_\_\_, 124 S. Ct. 2531 (2004). Appellant now files a motion seeking to either file a substitute

principal brief, or seeks this court's reconsideration of its July 23, 2004, Order. Appellant is attempting to do indirectly what he cannot do directly – raise a *Blakely* issue when it was not raised in his initial brief.

This court's precedent establishes that a party may not raise through a supplemental brief an issue not previously raised in his principal brief. *See U.S. v. Curtis*, \_\_\_ F.3d \_\_\_, No. 02-16224 (11th Cir. August 10, 2004); *U.S. v. Levy*, \_\_\_ F.3d \_\_\_, No. 01-17133 (11th Cir. August 3, 2004); *U.S. v. Ford*, 270 F.3d 1346, 1347 (11th Cir. 2001); *U.S. v. Ardley*, 242 F.3d 989, 990 (11th Cir. 2001); *U.S. v. Nealy*, 232 F.3d 825, 830 (11th Cir. 2000). Therefore, to the extent that Appellant seeks reconsideration of the July 23, 2004, Order, his motion is **DENIED**.

To the extent that Appellant's motion seeks to file a substitute principal brief for the purpose of raising a *Blakely* issue, we hold that such *Blakely* motions to file a substitute or amended principal brief should be construed as motions to file a supplemental brief and should be denied. Such *Blakely* motions must be construed for what they are. Otherwise, this court would be permitting Appellant, through a motion for a substituted or amended principal brief, to circumvent improperly our above precedent and to do indirectly what Appellant cannot do directly. Nor will we *sua sponte* order the filing of substituted or amended principal briefs. To do so is impermissible as it too would circumvent improperly

the above precedent of this court that forbids raising new issues by supplemental briefs. Accordingly, Appellant's motion to file a substitute principal brief is also **DENIED.**