

Cases Decided since Blakely¹

(as of 8/2/04)

I. Blakely Does Not Apply to U.S.S.G. Enhancements:

United States v. Pineiro, No. 03-30437, 2004 U.S. App. LEXIS 14259 (5th Cir. July 12, 2004); United States v. Lauersen, 2004 U.S. Dist. LEXIS 14491 (S.D.N.Y. July 29, 2004); United States v. Olivera-Hernandez, No. 2:04CR 0013 (D. Utah July 12, 2004).

II. Blakely Applies to U.S.S.G. Enhancements:

United States v. Ward, No. 03-2998, 2004 U.S. App. LEXIS 15298 (7th Cir. July 23, 2004); United States v. Mooney, No. 02-3388, 2004 U.S. App. LEXIS 15301(8th Cir. July 23, 2004) (per curiam); United States v. Ameline, No. 02-30326, 2004 U.S. App. LEXIS 15031 (9th Cir. July 21, 2004); United States v. Montgomery, No. 03-5256, 2004 U.S. App. LEXIS 14384 (6th Cir. July 14, 2004) vacated upon grant of reh'g en banc (July 19, 2004) and voluntarily dismissed (July 23, 2004); United States v. Booker, No. 03-4225, 2004 U.S. App. LEXIS 14223 (7th Cir. July 9, 2004); United States v. Gibson, No. 1:04-cr-12 (D. Vt. July 30, 2004); United States v. Mueffleman, Crim. No. 01-CR-10387-NG, 2004 U.S. Dist. LEXIS 14114(D. Mass. July 26, 2004); United States v. Zompa, Crim. No. 04-46-P-S-01, 2004 U.S. Dist. LEXIS 14335 (D.Me. July 26, 2004); United States v. Carter, 2004 U.S. Dist. LEXIS 14433 (C.D. Ill. July 23, 2004); United States v. Parson, No. 6:03-cr-204-Orl-31DAB (M.D. Fla. July 22, 2004); United States v. Sisson, Cr. No. 01-10185-EFH, 2004 U.S. Dist. LEXIS 14162 (D. Mass. July 21, 2004); United States v. Khoury, No. 6:04-cr-24-Orl-31DAB (M.D. Fla. July 21, 2004); United States v. Terrell, No. 8:04CR24, 2004 U.S. Dist. LEXIS 13781 (D. Neb. July 22, 2004); United States v. Marrero, No. 04 Cr. 0086 (JSR), 2004 U.S. Dist. LEXIS 13593 (S.D.N.Y. July 21, 2004); United States v. Sweitzer, No. 1:CR-03-087-01 (M.D.Pa. July 19, 2004); United States v. Harris, Crim. No. 03-244-03, 2004 U.S. Dist. LEXIS 13290 (W.D.Pa. July 16, 2004); United States v. Lockett, Crim. No. 3:04CR017, 2004 U.S. Dist. LEXIS 13710 (E.D.Va. July 16, 2004); United States v. Landgarten, No. 04-CR-70, 2004 U.S. Dist. LEXIS 13172 (E.D.N.Y. July 15, 2004); United States v. Einstman, No. 04 Cr. 97 (CM), 2004 U.S. Dist. LEXIS 13166 (S.D.N.Y. July 14, 2004); United States v. Leach,

¹ Prepared by Tahlia Townsend (Intern, Federal Defender Division; Yale Law School, Class of 2005).

Crim. No. 02-172-14, 2004 U.S. Dist. LEXIS 13291 (E.D.Pa. July 13, 2004); United States v. Croxford, No. 2:02-CR-00302PGC, 2004 U.S. Dist. LEXIS 12825 (D. Utah July 12, 2004); United States v. Khan, No. 02-CR-1242, 2004 U.S. Dist. LEXIS 13192 (E.D.N.Y. July 12, 2004); United States v. Toro, No. 3:02 cr 362 (PCD), 2004 U.S. Dist. LEXIS 12762 (D. Conn. July 8, 2004); United States v. Montgomery, No. 2:03-CR-801 TS, 2004 U.S. Dist. LEXIS 12700 (D. Utah July 8, 2004); United States v. Thompson, No. 2:04-CR-00095 (PGC), 2004 U.S. Dist. LEXIS 12582 (D. Utah July 8, 2004); United States v. Lamoreaux, No. 03-00399-01/02-CR-W-HFS, 2004 U.S. Dist. LEXIS 13225 (W.D.Mo. July 7, 2004); United States v. Medas, No. 03 CR 1048, 2004 U.S. Dist. LEXIS 12135 (E.D.N.Y. July 1, 2004); United States v. Shamblin, Crim. No. 2:03-00217, 2004 U.S. Dist. LEXIS 12288 (S.D.W.Va., June 30, 2004); United States v. Watson, CR 03-0146 (D.D.C. June 30, 2004); United States v. Fanfan, No. 03-47-P-H (D.Me. June 28, 2004); United States v. Gonzalez, No. 03 Cr. 41 (DAB), 2004 U.S. Dist. LEXIS 11760 (S.D.N.Y. June 25, 2004).

A. Blakely-infirm Enhancements Are Severable, and Other U.S.S.G. Provisions Remain Applicable in All Cases:

United States v. Ward, No. 03-2998, 2004 U.S. App. LEXIS 15298 (7th Cir. July 23, 2004); United States v. Ameline, No. 02-30326, 2004 U.S. App. LEXIS 15031 (9th Cir. July 21, 2004); United States v. Booker, No. 03-4225, 2004 U.S. App. LEXIS 14223 (7th Cir. July 9, 2004); United States v. Gibson, No. 1:04-cr-12 (D. Vt. July 30, 2004); United States v. Zompa, Crim. No. 04-46-P-S-01, 2004 U.S. Dist. LEXIS 14335 (D.Me. July 26, 2004); United States v. Terrell, No. 8:04CR24, 2004 U.S. Dist. LEXIS 13781 (D. Neb. July 22, 2004); United States v. Leach, Crim. No. 02-172-14, 2004 U.S. Dist. LEXIS 13291 (E.D.Pa. July 13, 2004); United States v. Khan, No. 02-CR-1242, 2004 U.S. Dist. LEXIS 13192 (E.D.N.Y. July 12, 2004); United States v. Toro, No. 3:02 cr 362 (PCD), 2004 U.S. Dist. LEXIS 12762 (D. Conn. July 8, 2004); United States v. Montgomery, No. 2:03-CR-801 TS, 2004 U.S. Dist. LEXIS 12700 (D. Utah July 8, 2004); United States v. Shamblin, Crim. No. 2:03-00217, 2004 U.S. Dist. LEXIS 12288 (S.D.W.Va., June 30, 2004); United States v. Watson, CR 03-0146 (D.D.C. June 30, 2004); United States v. Gonzalez, No. 03 Cr. 41 (DAB), 2004 U.S. Dist. LEXIS 11760 (S.D.N.Y. June 25, 2004).

B. Blakely-infirm Enhancements Are Not Severable from Remainder of U.S.S.G.:

United States v. Mooney, No. 02-3388, 2004 U.S. App. LEXIS 15301 (8th Cir. July 23, 2004) (per curiam);

United States v. Montgomery, No. 03-5256, 2004 U.S. App. LEXIS 14384 (6th Cir. July 14, 2004) vacated upon grant of reh'g en banc (July 19, 2004) and voluntarily dismissed (July 23, 2004); United States v. Mueffleman, Crim. No. 01-CR-10387-NG, 2004 U.S. Dist. LEXIS 14114 (D. Mass. July 26, 2004); United States v. Carter, 2004 U.S. Dist. LEXIS 14433 (C.D. Ill. July 23, 2004); United States v. Parson, No. 6:03-cr-204-Orl-31DAB (M.D. Fla. July 22, 2004); United States v. Sisson, Cr. No. 01-10185-EFH, 2004 U.S. Dist. LEXIS 14162 (D. Mass. July 21, 2004); United States v. Khoury, No. 6:04-cr-24-Orl-31DAB (M.D. Fla. July 21, 2004); United States v. Marrero, No. 04 Cr. 0086 (JSR), 2004 U.S. Dist. LEXIS 13593 (S.D.N.Y. July 21, 2004); United States v. King, No. 6:04-CR-35-ORL-31KRS, 2004 U.S. Dist. LEXIS 13496 (M.D. Fla. July 19, 2004); United States v. Sweitzer, No. 1:CR-03-087-01 (M.D.Pa. July 19, 2004); United States v. Harris, Crim. No. 03-244-03, 2004 U.S. Dist. LEXIS 13290 (W.D.Pa. July 16, 2004); United States v. Lockett, Crim. No. 3:04CR017, 2004 U.S. Dist. LEXIS 13710 (E.D.Va. July 16, 2004); United States v. Einstman, No. 04 Cr. 97 (CM), 2004 U.S. Dist. LEXIS 13166 (S.D.N.Y. July 14, 2004); United States v. Croxford, No. 2:02-CR-00302PGC, 2004 U.S. Dist. LEXIS 12825 (D. Utah July 12, 2004); United States v. Thompson, No. 2:04-CR-00095 (PGC), 2004 U.S. Dist. LEXIS 12582 (D. Utah July 8, 2004); United States v. Lamoreaux, No. 03-00399-01/02-CR-W-HFS, 2004 U.S. Dist. LEXIS 13225 (W.D.Mo. July 7, 2004).

1. Blakely-infirm Enhancements Are Not Severable, and No One Can Be Sentenced under the Guidelines:

United States v. Montgomery, No. 03-5256, 2004 U.S. App. LEXIS 14384 (6th Cir. July 14, 2004) vacated upon grant of reh'g en banc (July 19, 2004) and voluntarily dismissed (July 23, 2004); United States v. Mueffleman, Crim. No. 01-CR-10387-NG, 2004 U.S. Dist. LEXIS 14114 (D. Mass. July 26, 2004); United States v. Marrero, No. 04 Cr. 0086 (JSR), 2004 U.S. Dist. LEXIS 13593 (S.D.N.Y. July 21, 2004); United States v. Sisson, Cr. No. 01-10185-EFH, 2004 U.S. Dist. LEXIS 14162 (D. Mass. July 21, 2004); United States v. King, No. 6:04-CR-35-ORL-31KRS, 2004

U.S. Dist. LEXIS 13496 (M.D. Fla. July 19, 2004); United States v. Harris, Crim. No. 03-244-03, 2004 U.S. Dist. LEXIS 13290 (W.D.Pa. July 16, 2004); United States v. Einstman, No. 04 Cr. 97 (CM), 2004 U.S. Dist. LEXIS 13166 (S.D.N.Y. July 14, 2004); United States v. Lamoreaux, No. 03-00399-01/02-CR-W-HFS, 2004 U.S. Dist. LEXIS 13225 (W.D.Mo. July 7, 2004).

2. Blakely-infirm Enhancements Are Not Severable, but Guidelines Are Still Applicable in Cases Where No Enhancement Is Requested:

United States v. Lockett, Crim. No. 3:04CR017, 2004 U.S. Dist. LEXIS 13710 (E.D.Va. July 16, 2004); United States v. Croxford, No. 2:02-CR-00302PGC, 2004 U.S. Dist. LEXIS 12825 (D. Utah July 12, 2004); United States v. Thompson, No. 2:04-CR-00095 (PGC), 2004 U.S. Dist. LEXIS 12582 (D. Utah July 8, 2004).

III. Sentencing Juries

A. Sentencing Juries Endorsed:

United States v. Ameline, No. 02-30326, 2004 U.S. App. LEXIS 15031 (9th Cir. July 21, 2004); United States v. Booker, No. 03-4225, 2004 U.S. App. LEXIS 14223 (7th Cir. July 9, 2004); United States v. Landgarten, No. 04-CR-70, 2004 U.S. Dist. LEXIS 13172 (E.D.N.Y. July 15, 2004); United States v. Khan, No. 02-CR-1242, 2004 U.S. Dist. LEXIS 13192 (E.D.N.Y. July 12, 2004).

B. Sentencing Juries Criticized:

United States v. Sweitzer, No. 1:CR-03-087-01 (M.D.Pa. July 19, 2004); United States v. Croxford, No. 2:02-CR-00302PGC, 2004 U.S. Dist. LEXIS 12825 (D. Utah July 12, 2004); United States v. Montgomery, No. 2:03-CR-801 TS, 2004 U.S. Dist. LEXIS 12700 (D. Utah July 8, 2004).

IV. Blakely Not Retroactive:

Simpson v. United States, No. 04-2700 (7th Cir. July 16, 2004); In Re Dean, No. 04-13244, 2004 U.S. App. LEXIS 14191 (11th Cir. July 9, 2004) (per curiam); United States v. Stoltz, Crim. No. 99-356 (3)(DSD/JMM), 2004 U.S. Dist. LEXIS 13968 (D. Minn. July 19, 2004); United States v. Traeger, No. 04 C 2685, 2004 U.S. Dist. LEXIS 12901 (N.D. Ill. July 8, 2004); Patterson v. United States, 03-CV-74948, 2004 U.S. Dist LEXIS 12402 (E.D. Mich. June 25, 2004).

V. An Agreement to a Guidelines Sentence Made Prior to Blakely Is Not a Waiver of Blakely Objection to Sentence:

United States v. Terrell, No. 8:04CR24, 2004 U.S. Dist. LEXIS 13781 (D. Neb. July 22, 2004); United States v. Harris, Crim. No. 03-244-03, 2004 U.S. Dist. LEXIS 13290 (W.D.Pa. July 16, 2004).