

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-4140

United States of America,

Appellee,

v.

Kenny Clyde Homer Bevard, II,

Appellant.

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Appeal from the United States
District Court for the Southern
District of Iowa.

[UNPUBLISHED]

Submitted: September 13, 2005

Filed: September 20, 2005

Before RILEY, FAGG, and GRUENDER, Circuit Judges.

PER CURIAM.

Kenny Clyde Homer Bevard, II pleaded guilty to being a felon in possession of a firearm. After Bevard's conviction became final, the Supreme Court decided Blakely v. Washington, 124 S. Ct. 2531 (2004). Bevard later filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, asserting his sentence violates Blakely. The district court* denied Bevard's motion holding Blakely does not apply on collateral review. Bevard appeals asserting Blakely and United States v. Booker, 125 S. Ct. 738 (2005), should apply retroactively for three reasons. First, Bevard

*The Honorable Ronald E. Longstaff, United States District Judge for the Southern District of Iowa.

contends Blakely and Booker did not create new procedural rules because their holdings were dictated by existing precedent. Second, Bevard argues that even if Blakely and Booker created a new procedural rule, it is a watershed rule implicating the fundamental fairness and accuracy of criminal proceedings. Third, Bevard argues Blakely and Booker created a substantive change in the law by changing the punishment available for the crime. Bevard's arguments are foreclosed by our recent decision in Never Misses a Shot v. United States, 413 F.3d 781 (8th Cir. 2005). Like all other circuits that have considered the issue, we held "the 'new rule' announced in Booker does not apply to criminal convictions that became final before the rule was announced, and thus does not benefit movants in collateral proceedings." Id. at ____.

We thus affirm the district court's denial of Bevard's motion.
