

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

NORMAN ANTHONY KING, aka Norm
King; aka Norman August Klause,
Defendant-Appellant.

Nos. 99-10478
01-10720

D.C. No.
CR-95-00197-VRW
Northern District
of California,
San Francisco

ORDER

Filed August 16, 2005

Before: Susan P. Graber, Raymond C. Fisher and
Marsha S. Berzon, Circuit Judges.

ORDER

In this case, we affirmed the judgment of conviction on December 23, 2002. The mandate issued on March 11, 2003. The Supreme Court denied certiorari on June 2, 2003. On August 9, 2004, defendant-appellant King filed a *pro se* motion “requesting amendment to [the] mandate and remand for resentencing” in light of the Supreme Court’s decision in *United States v. Booker*, 125 S.Ct. 738 (2005). We construe this motion as a motion to recall the mandate, and deny it.

We will recall a mandate only “in extraordinary circumstances.” *Calderon v. Thompson*, 523 U.S. 538, 550 (1998) (power to recall mandate is “one of last resort, to be held in reserve against grave, unforeseen contingencies”). *See also Nevius v. Sumner*, 105 F.3d 453, 460-61 (9th Cir. 1996). The circumstances here do not qualify as such. Although the

Supreme Court has invalidated the mandatory Sentencing Guidelines under which King was sentenced, the remedy put in place allows sentencing judges to continue to apply the Guidelines, albeit under a new discretionary regime in which other factors are relevant. *Booker*, 125 S.Ct. at 764-68; 18 U.S.C. § 3553(a). At best, defendant would be entitled to a limited remand at which his sentencing judge could determine whether or not to resentence. *See United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005).

We therefore conclude that the “extraordinary circumstances” necessary to justify recalling a mandate are not present here.

The motion filed August 9, 2004, is denied.

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