

06-5618 CLAIBORNE V. UNITED STATES

DECISION BELOW:439 F3d 479

LOWER COURT CASE NUMBER: 05-2198

QUESTIONS PRESENTED:

In *United States v. Booker*, 543 U.S. 220 (2005), this Court ruled that the mandatory use of the United States Sentencing Guidelines violated the Sixth Amendment right to a jury trial on any fact required to enhance a criminal sentence. The Court remedied the error by making the Guidelines “effectively advisory” and, therefore, just one of many factors a court considers in choosing a sentence under 18 U.S.C. § 3553(a). The Court also prescribed appellate review of sentences for “reasonableness” in light of all the section 3553(a) factors and the reasons for the sentence as stated by the sentencing judge. The model of review on which *Booker* based this “reasonableness” standard paid “substantial deference” to a sentencing judge’s discretionary choices in departing from the guidelines range, as held in *Koon v. United States*, 518 U.S. 81(1996).

In light of the foregoing, these issues are presented:

1. Does an appellate court make the Sentencing Guidelines effectively mandatory by granting a presumption of reasonableness to the Guidelines range in reviewing a sentence outside that range, rather than granting deference to the sentencing judge’s decision in light of all the 3553(a) factors?
2. Does granting a presumption of reasonableness to the guidelines range deny the substantial deference granted a district court’s discretionary sentencing decision under the “reasonableness” standard chosen in *Booker*?

CERT. GRANTED 11/3/2006

LIMITED TO THE FOLLOWING QUESTIONS:

1) WAS THE DISTRICT COURT’S CHOICE OF BELOW-GUIDELINES SENTENCE REASONABLE? 2) IN MAKING THAT DETERMINATION, IS IT CONSISTENT WITH UNITED STATES V. BOOKER, 543 U.S. 220 (2005), TO REQUIRE THAT A SENTENCE WHICH CONSTITUTES A SUBSTANTIAL VARIANCE FROM THE GUIDELINES BE JUSTIFIED BY EXTRAORDINARY CIRCUMSTANCES?