

Service: **Get by LEXSEE®**
Citation: **2005 U.S. Dist. LEXIS 1189**

*2005 U.S. Dist. LEXIS 1189, **

WILLIE FRANK KING, Petitioner, VS. COLE JETER, Warden, FMC Fort Worth, Respondent.

Civil Action No. 4:04-CV-0600-D

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH
DIVISION

2005 U.S. Dist. LEXIS 1189

January 27, 2005, Decided
January 27, 2005, Filed

PRIOR HISTORY: [King v. Jeter, 2005 U.S. Dist. LEXIS 335 \(N.D. Tex., Jan. 11, 2005\)](#)

DISPOSITION: Findings, conclusions and recommendations of Magistrate Judge adopted. Petitioner's petition for writ of habeas corpus denied.

COUNSEL: [***1**] For Willie Frank King, Petitioner: Pro se, Fort Worth, TX.

For Warden L E Fleming, Warden, FMC Fort Worth, Respondent: Angie L Henson, US Attorney's Office, Fort Worth, TX.

JUDGES: SIDNEY A. FITZWATER, UNITED STATES DISTRICT JUDGE.

OPINIONBY: SIDNEY A. FITZWATER

OPINION: ORDER

After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the court concludes that the recommendation is correct and is therefore adopted.

Because the magistrate judge filed his findings, conclusions, and recommendation on January 11, 2005, he did not have the benefit of the Supreme Court's decision on January 12, 2005 in [United States v. Booker, U.S. , 125 S. Ct. 738, 2005 WL 50108 \(Jan. 12, 2005\)](#). Petitioner objects to the findings, conclusions, and recommendation on this and other grounds. Although the magistrate judge made his recommendation without the benefit of *Booker*, his recommendation is correct.

First, *Booker*, like [Blakely v. Washington, U.S. , 159 L. Ed. 2d 403, 124 S. Ct. 2531 \(2004\)](#), does not implicate petitioner's conviction for [***2**] a substantive offense.

Second, *Booker* is not retroactive. *Booker* itself says that "we must apply today's holdings -- both the [Sixth Amendment](#) holding and our remedial interpretation of the [Sentencing Act](#) -- to all cases on direct review." *Id.* at [, 2005 WL 50108 at *29](#). And cases like *Booker* -- including [Apprendi v. New Jersey, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 \(2000\)](#), and [Ring v. Arizona, 536 U.S. 584, 153 L. Ed. 2d 556, 122 S. Ct. 2428 \(2002\)](#) -- do not apply retroactively where first raised on collateral review. See [Schriro v. Summerlin, U.S. , 159 L. Ed. 2d 442, 124 S. Ct. 2519, 2526 \(2004\)](#) (*Ring*): [United States v. Brown, 305 F.3d](#)

[304, 309-10 \(5th Cir. 2002\)](#) (per curiam) (*Apprendi*), *cert. denied*, [538 U.S. 1007, 155 L. Ed. 2d 840, 123 S. Ct. 1919 \(2003\)](#).

The recommendation of the magistrate judge is therefore adopted, and petitioner's petition for habeas corpus relief under [28 U.S.C. § 2241](#) is denied. *

- - - - - Footnotes - - - - -

* Petitioner refers in his objections to a pending petition for rehearing in the Supreme Court of the United States. See Objs. at 2. According to the Supreme Court docket, the Court denied rehearing on January 10, 2005. [King v. United States, 2005 U.S. LEXIS 410, No. 04-6519 \(U.S. Jan. 10, 2005\)](#) (order denying petition for rehearing).

- - - - - End Footnotes- - - - - [***3**]

SO ORDERED.

January 27, 2005.

SIDNEY A. FITZWATER

UNITED STATES DISTRICT JUDGE

JUDGMENT






For the reasons set out in an order filed today, it is ordered and adjudged that petitioner's petition for a writ of habeas corpus is denied, and this action is dismissed with prejudice.

Done at Dallas, Texas this 27th day of January, 2005.

SIDNEY A. FITZWATER

UNITED STATES DISTRICT JUDGE

Service: **Get by LEXSEE®**
Citation: **2005 U.S. Dist. LEXIS 1189**
View: Full
Date/Time: Friday, February 4, 2005 - 2:32 PM EST

- * Signal Legend:
 -  - Warning: Negative treatment is indicated
 -  - Caution: Possible negative treatment
 -  - Positive treatment is indicated
 -  - Citing Refs. With Analysis Available
 -  - Citation information available
- * Click on any *Shepard's* signal to *Shepardize®* that case.

[About LexisNexis](#) | [Terms and Conditions](#)

[Copyright ©](#) 2005 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.