

NOT INTENDED FOR PRINT PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:03-00187-02

MARCELLUS JABBAR THOMPSON,

Defendant.

ORDER

The United States Supreme Court's decision in *Blakely v. Washington*, 2004 WL 1402697 (U.S. June 24, 2004), has given rise to inconsistent sentencing practices in federal courts. The Circuit Courts that have addressed the issue are split as to whether *Blakely* applies to the United States Sentencing Guidelines. *U.S. v. Harris*, 03-5256 (6th Cir. July 14, 2004); *U.S. v. Pineiro*, No. 03-30437 (5th Cir. July 12, 2004); *U.S. v. Booker*, No-CR-026-S-01 (7th Cir. July 9, 2004). The Second Circuit has certified the question to the United States Supreme Court. *U.S. v. Penaranda*, No. 03-1055(L) & *U.S. v. Rojas*, No. 03-1062(L) (2d Cir. July 12, 2004). Further, those courts finding that *Blakely* does apply to the Guidelines have taken different approaches to sentencing post-*Blakely*. See, e.g., *U.S. v. Croxford*, 2:02-cr-00302PGC (D. Utah June 29, 2004); *U.S. v. Shamblin*, 2004 WL 1468561 (S.D. W. Va. June 20, 2004). This court, and several other district courts, have concluded that the Guidelines remain the law in sentencing matters to the extent that they can be

applied in a manner consistent with *Blakely*. See, e.g., *U.S. v. Shamblin*, 2004 WL 1468561; *U.S. v. Toro*, 3:02-cr-362 (D. Conn. July 8, 2004); *U.S. v. Montgomery*, 2:03-cr-801 (D. Utah July 8, 2001). Some district courts, however, have found that *Blakely* renders the Guideline scheme unconstitutional in its entirety. See, e.g., *U.S. v. Medas*, 2004 Dist. LEXIS 12135 (July 1, 2004); *U.S. v. Croxford*, 2:02-cr-00302PGC.

The court **FINDS** that consistent application of the law is of paramount importance in sentencing matters. Therefore, in the interests of justice, the court will move all sentencing hearings to a date after October 15, 2004. The sentencing hearing in this case that was previously scheduled for July 16, 2004, at 10:00 am is now **SCHEDULED** for **October 21, 2004, at 10:00 am**. The court will consider rescheduling the hearing for a earlier date on motion of a party and for good cause shown.

The court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal, and **DIRECTS** the Clerk to post this unpublished opinion at <http://www.wvwd.uscourts.gov>.

ENTER: July 14, 2004

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

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