

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

**File Name: 05a0267n.06**

**Filed: April 8, 2005**

**No. 04-1306**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR THE
DAMON RICHARD NELSON,	)	EASTERN DISTRICT OF MICHIGAN
	)	
Defendant-Appellant.	)	
	)	
	)	
	)	
	)	

Before: MARTIN, COOK, and LAY\*, Circuit Judges.

PER CURIAM. Damon Nelson appeals his sentence for being a felon in possession of a firearm and possessing with intent to distribute crack, arguing that the district court erred in sentencing him under “mandatory” Guidelines, in light of *United States v. Booker*, 125 S. Ct. 738 (2005). We agree that the district court erred, and presume this prejudiced Nelson. *See United States v. Barnett*, 398 F.3d 516, 525-30 (6th Cir. 2005). Because nothing in the record rebuts this presumption, we vacate Nelson’s sentence and remand for resentencing in light of *Booker*.

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\*The Honorable Donald P. Lay, Circuit Judge for the United States Court of Appeals for the Eighth Circuit, sitting by designation.

No. 03-2406

*Bowman v. Knape & Vogt Manufacturing Company*