

No. 04-2120
United States v. Sykes

ruled on this harmless error argument and that we are bound to rule against the government until such time as the Court decides to take the question for en banc review:

Although Sixth Circuit precedent is clearly to contrary, *see, United States v. Oliver*, 397 F.3d 369 (6th Cir. 2005); the government continues to seek rehearing of that adverse authority through whichever petition (if any) the Sixth Circuit grants. Should this Court decide to not grant any petition for rehearing *en banc*, then the government concedes remand in this case is required. The government respectfully seeks to preserve its argument on this point.

(Brief of Appellee, p. 8.)

In light of the fact that our Court has already ruled on this question and in light of the fact that one panel of the Court may not overrule a prior panel, our panel must vacate the sentence in this case and remand the case for reconsideration in light of the *Booker* case.

Accordingly, it is so ORDERED.