

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 11-5545

FILED
Mar 28, 2013
DEBORAH S. HUNT, ClerkDERRY LOVINS,
Petitioner - Appellant,

v.

TONY PARKER, Warden,
Respondent - Appellee.

Before: CLAY and STRANCH, Circuit Judges; BELL, District Judge.

JUDGMENTOn Appeal from the United States District Court
for the Western District of Tennessee at Memphis.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the district court's denial of relief on Lovins's claims of trial error is AFFIRMED. IT IS FURTHER ORDERED that the district court's denial of habeas corpus as to Lovins's *Blakely* claim is REVERSED, and a writ of habeas corpus is conditionally GRANTED unless the State initiates proceedings within 180 days of this order to either (1) reset Lovins's sentence to the presumptive statutory sentence of twenty years, or (2) provide Lovins a new sentencing hearing under a sentencing procedure that satisfies the Sixth Amendment right to trial by jury.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk