

Filed: April 27, 2005

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4253

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MOHAMAD YOUSSEF HAMMOUD, a/k/a Ali Abousaleh,
a/k/a Ali Albousaleh,

Defendant - Appellant,

CENTER FOR CONSTITUTIONAL RIGHTS; NATIONAL
COALITION TO PROTECT POLITICAL FREEDOM;
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS; NATIONAL LAWYERS GUILD,

Amici Supporting Appellant.

ORDER

This court, sitting en banc, previously affirmed Mohamad Youssef Hammoud's convictions and sentence. See United States v. Hammoud, 381 F.3d 316 (4th Cir. 2004) (en banc). Subsequently, the Supreme Court granted certiorari, vacated our decision, and remanded for reconsideration in light of United States v. Booker,

125 S. Ct. 738 (2005). See United States v. Hammoud, 125 S. Ct. 1051 (2005).

Because the order of the Supreme Court does not affect our resolution of Hammoud's challenges to his convictions and the calculation of his guideline range, we reinstate those portions of our prior opinion. See Hammoud, 381 F.3d at 325-44, 354-57. However, the sentence imposed on Hammoud exceeded the maximum sentence authorized by the jury verdict alone, see United States v. Hughes, No. 03-4172, 2005 WL 628224, at *5 (4th Cir. Mar. 16, 2005), and the Government cannot prove that this error, which Hammoud preserved in the district court, did not affect Hammoud's substantial rights, see Fed. R. Crim. P. 52(a). We therefore vacate Hammoud's sentence and remand for resentencing under the advisory guidelines regime set forth in Booker, 125 S. Ct. at 756-57, 764-65.

Entered at the direction of Chief Judge Wilkins with the concurrences of Judges Widener, Wilkinson, Niemeyer, Williams, Michael, Motz, Traxler, King, Gregory, Shedd, and Duncan.

For the Court

/s/ Patricia S. Connor

Clerk