

ON REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 03-4551

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KEMP SHIDER,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, District Judge. (CR-02-123)

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Submitted: February 16, 2005

Decided: March 31, 2005

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Before WILLIAMS, MICHAEL, and TRAXLER, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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James H. Moss, MOSS, KUHN & FLEMING, P.A., Beaufort, South Carolina, for Appellant. J. Strom Thurmond, Jr., United States Attorney, Miller W. Shealy, Jr., Assistant United States Attorney, Charleston, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Kemp Shider petitions this court for rehearing of his earlier appeal. In light of United States v. Booker, 125 S. Ct. 738 (2005), and United States v. Hughes, 2005 U.S. App. LEXIS 4331 (4th Cir. Mar. 16, 2005), we grant the petition for rehearing solely as to the sentence and find that the district court plainly erred in imposing a sentence that exceeded the maximum allowed based on facts established by Shider's guilty plea. We therefore vacate the sentence and remand for proceedings consistent with Hughes. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED