

ON REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4950

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROBIELL DEANGELO JAMES,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Margaret B. Seymour, District Judge. (CR-03-148)

Submitted: February 16, 2005

Decided: May 20, 2005

Before WILKINSON, WILLIAMS, and MICHAEL, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Beattie B. Ashmore, PRICE, PASCHAL & ASHMORE, P.A., Greenville, South Carolina, for Appellant. J. Strom Thurmond, Jr., United States Attorney, E. Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Robiell Deangelo James 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, 401 F.3d 540 (4th Cir. 2005), we grant the petition for rehearing and find that the district court plainly erred in imposing a sentence that exceeded the maximum allowed based on facts established by James' guilty plea. We therefore vacate the sentence and remand for resentencing 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