

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4812

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MARC DARNELL DOANE,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Richard D. Bennett, District Judge. (CR-04-6-RDB)

Submitted: January 31, 2005

Decided: February 11, 2005

Before MOTZ, KING, and DUNCAN, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Franklin Warner Draper, IV, Assistant Federal Public Defender, Baltimore, Maryland; James Wyda, Federal Public Defender, Lauren Elizabeth Case, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greenbelt, Maryland, for Appellant. Thomas Michael DiBiagio, United States Attorney, George Levi Russell, III, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Marc Darnell Doane pled guilty on June 10, 2004, to possession of a firearm after conviction of a felony, in violation of 18 U.S.C. § 922(g)(1) (2000). Doane was sentenced on September 17, 2004, to forty-one months imprisonment to be followed by three years of supervised release. The district court also specified an alternative sentence of thirteen months imprisonment pursuant to this Court's recommendation in United States v. Hammoud, 378 F.3d 426 (4th Cir. 2004) (order), opinion issued by 381 F.3d 316, 353-54 (4th Cir. 2004) (en banc), cert. granted and judgment vacated, 73 U.S.L.W. 3436, 2005 WL 124093 (U.S. Jan. 24, 2005) (No. 04-193).

Doane appealed, challenging the constitutionality of the federal sentencing scheme in light of the Supreme Court's decision in Blakely v. Washington, 124 S. Ct. 2531 (2004). The case was held in abeyance pending decision in United States v. Booker, 125 S. Ct. 738 (2005). That opinion has now issued, and applies the Court's reasoning in Blakely to the federal sentencing guidelines.

Doane now moves for an expedited remand of this case to the district court to implement the alternative sentence previously announced by the district court. Counsel notes that Doane has already served more time than the district court set forth in the alternative sentence. We grant Doane's motion for remand to allow the district court to reconsider Doane's sentence in light of the Booker decision and United States v. Hughes, __ F.3d __, __, 2005

WL 147059, at *3-*4 (4th Cir. Jan. 24, 2005) (No. 03-4172) (discussing post-Booker sentencing). Doane states that the sentencing issue is the only one he would pursue on appeal. Therefore, we affirm his conviction, vacate the sentence imposed by the district court, and remand for reconsideration of the sentence. The mandate shall issue forthwith.

AFFIRMED IN PART,
VACATED IN PART, AND REMANDED