

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4989

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CARLOS RIVERA-CRUZ,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. David A. Faber, Chief District Judge. (CR-03-286)

Submitted: March 30, 2005

Decided: April 18, 2005

Before MICHAEL and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Mary Lou Newberger, Federal Public Defender, Jonathan D. Byrne, Appellate Counsel, Edward H. Weis, Assistant Federal Public Defender, Charleston, West Virginia, for Appellant. Kasey Warner, United States Attorney, Karen B. George, Assistant United States Attorney, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Carlos Rivera-Cruz pled guilty to one count of making a false statement in an application for a passport, in violation of 18 U.S.C.A. § 1542 (West Supp. 2004). On October 29, 2004, the district court sentenced Rivera-Cruz, over his objection based upon Blakely v. Washington, 124 S. Ct. 2531 (2004), to a fourteen-month term of imprisonment to be followed by three years of supervised release. After Rivera-Cruz filed his notice of appeal, the Supreme Court decided United States v. Booker, 125 S. Ct. 738 (2005). The Government and Rivera-Cruz have filed a joint motion to remand for resentencing in light of the Booker decision.

We grant the motion for remand to allow the district court to reconsider Rivera-Cruz's sentence in light of the Booker decision. Rivera-Cruz's formal brief on appeal reveals that the applicability of Booker is the only issue that he wishes to pursue on appeal. Therefore, we affirm his conviction, vacate the sentence imposed by the district court, and remand for reconsideration of the sentence. 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.

AFFIRMED IN PART,
VACATED IN PART, AND REMANDED