

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4990

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ALLEN EUGENE LAYTON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Henry Coke Morgan, Jr., Senior District Judge. (CR-04-65)

Submitted: April 8, 2005

Decided: May 20, 2005

Before NIEMEYER, TRAXLER, and SHEDD, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Frank Willard Dunham, Jr., Federal Public Defender, Alexandria, Virginia, Robert James Wagner, Federal Public Defender, Richmond, Virginia, for Appellant. Paul Joseph McNulty, United States Attorney, Alexandria, Virginia, Timothy Richard Murphy, Special Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Allen Eugene Layton pled guilty to possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1) (2000), possession of a firearm during and in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A) (2000), and possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1) (2000). On October 26, 2004, the district court sentenced Layton to concurrent eighty-four month prison terms on counts one and three and a consecutive sixty-month prison term on count two, followed by five years of supervised release. However, in light of Blakely v. Washington, 124 S. Ct. 2531 (2004), and pursuant to this court's recommendation in United States v. Hammoud, 378 F.3d 426 (4th Cir.) (order), opinion issued by 381 F.3d 316, 353-54 (4th Cir. 2004) (en banc), cert. granted and judgment vacated, 125 S. Ct. 1051 (2005), the district court announced an alternative prison sentence for counts one and three of seventy-two months. After Layton filed his notice of appeal, the Supreme Court decided United States v. Booker, 125 S. Ct. 738 (2005). Layton has now filed an unopposed motion to remand his case to the district court for resentencing in light of Booker.

We grant the motion for remand to allow the district court to reconsider Layton's sentence in light of the Booker decision. Layton indicates the sole issue he wishes to pursue on appeal is the propriety of his sentence imposed under the mandatory

sentencing guidelines scheme in effect at the time he was sentenced. Therefore, we affirm his convictions, 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