

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-4915**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RUSSELL LEE EBERSOLE,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CR-03-112)

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Submitted: June 30, 2006

Decided: July 13, 2006

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Before WILKINSON, MICHAEL, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Gregory E. Stambaugh, LAW OFFICES OF GREGORY E. STAMBAUGH, Manassas, Virginia, for Appellant. Paul J. McNulty, United States Attorney, Thomas H. McQuillan, Robert C. Erickson, Assistant United States Attorneys, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Russell Lee Ebersole was convicted on twenty-five counts of wire fraud, in violation of 18 U.S.C.A. § 1343 (West Supp. 2006), and two counts of presenting false claims to the government, in contravention of 18 U.S.C. § 287 (2000). The district court originally imposed a total sentence of seventy-eight months in prison: eighteen months on one of the wire fraud counts and a consecutive sixty months on the remaining twenty-six counts. Ebersole appealed his convictions and sentence. We affirmed Ebersole's convictions, but vacated his sentence and remanded for resentencing, concluding that, pursuant to United States v. Booker, 543 U.S. 220 (2005), Ebersole's sentence violated the Sixth Amendment, and that the sentence enhancement for abuse of a position of trust was improper "in the present circumstances." United States v. Ebersole, 411 F.3d 517, 534 (4th Cir. 2005), cert. denied, 126 S. Ct. 1142 (2006).

Upon remand, the district court sentenced Ebersole to a total of sixty-three months in prison: concurrent sixty month terms on the wire fraud counts and concurrent three-month terms on the false claims counts to be served consecutively to the wire fraud counts. Ebersole timely appealed.

Ebersole argues that his sentence following Booker violates his due process rights, as informed by ex post facto principles. This claim is foreclosed by our recent decision in United States v. Davenport, 445 F.3d 366 (4th Cir. 2006).

Accordingly, we affirm Ebersole's sentence. We deny Ebersole's motions to remand or to file a supplemental brief. 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