

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

March 6, 2006

Nos. 01-2399 and 03-3290

United States of America

v.

David Worrells,

Appellant

E.D. of PA (Criminal No. 00-00313-2)

Present: FISHER and ALDISERT, Circuit Judges

Motion by Appellant For Leave to File Motion for Rehearing En Banc Out of Time and Motion for Rehearing of Denial of Motion to Recall the Mandate and Denial of Rehearing.

See order of 5/21/04

See order of 1/26/06

/s/ Charlene Crisden

Case Manager 267-299-4923

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O R D E R

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IT NOW APPEARING that all of Petitioner's co-defendants who have appealed the judgment of the District Court for the Eastern District of Pennsylvania at No. 00-cr-00313-2 have been successful in vacating sentences received, the last being Co-Appellant Mark Jacobs in United States v. Mark Jacobs, No. 01-3410, on February 16, 2006,

IT IS ORDERED that Appellant's motion for leave to file motion for panel rehearing out of time is GRANTED, the motion for rehearing the denial of the motion to recall mandate is GRANTED, and upon rehearing,

IT IS ORDERED that that part of the opinion previously filed in the within matter affirming the judgment of conviction is affirmed, and that to the extent that Appellant challenges his sentence under United States v. Booker, 543 U.S.125 S. Ct. 738 (2005), and having determined that the sentencing issues Appellant raises are best determined by the District Court in the first instance, we will vacate for sentencing and remand for re-sentence in accordance with Booker.

By the Court,

/s/ D. Michael Fisher

Circuit Judge

Dated: March 16, 2006

CLC\cc: Hope C. Lefeber, Esq.

Kathy A. Stark, Esq.