

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-1577

UNITED STATES OF AMERICA

v.

FRANK GINESI

APPELLANT

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 99-CR-661)
District Judge: Honorable Dennis M. Cavanaugh

Submitted November 3, 2004
Before: ALITO, BARRY, and FUENTES, Circuit Judges.

(Filed: May 10, 2005)

OPINION OF THE COURT

FUENTES, Circuit Judge.

Frank Ginesi pled guilty to a two count indictment charging him in Count One with mail fraud, and in Count Two with filing false tax returns. The District Court

sentenced Ginesi, pursuant to the United States Sentencing Guidelines, to a 27 month term of imprisonment after denying Ginesi's motion for a downward departure based upon his age and deteriorating mental condition. Ginesi later moved for reconsideration of his sentence, which was also denied by the District Court. On appeal, he challenges his sentence under *United States v. Booker*, 543 U.S. ___, 125 S. Ct. 738 (2005).

Having determined that the sentencing issues appellant raises are best determined by the District Court in the first instance, we will vacate the sentence and remand for resentencing in accordance with *Booker*. Ginesi raises no challenge as to his conviction and accordingly has waived any argument in this regard. We will affirm the judgment of conviction.