NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-1701

UNITED STATES OF AMERICA

v.

SON THANH LE,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
D.C. Crim. No. 02-cr-00689-2
District Judge: The Honorable Petrese B. Tucker

Submitted Under Third Circuit LAR 34.1(a)
May 21, 2007

Before: BARRY, CHAGARES, and TASHIMA,[*] Circuit Judges

(Opinion Filed: June 12, 2007)

OPINION

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[*] The Honorable A. Wallace Tashima, Senior Circuit Judge, United States Court of Appeals for the Ninth Circuit, sitting by designation.

BARRY, Circuit Judge

Appellant, Son Thanh Le, argues that the District Court committed multiple errors in calculating his Guidelines range and ultimately sentencing him to 151 months imprisonment. We will remand for resentencing.

In October 2002, Le was charged by a federal grand jury with conspiracy to distribute 3,4 methylenedioxymethamphetamine ("MDMA"), in violation of 21 U.S.C. § 846, and possession with intent to distribute MDMA and aiding and abetting such possession with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Le went to trial, and, having failed to appear for the final day of proceedings, was convicted by the jury on both counts in absentia. Two months later, he was arrested on a warrant and was subsequently sentenced to 151 months imprisonment followed by three years of supervised release. A $2000 fine and a $200 special assessment were also imposed.

Le timely appealed. He argues that the District Court improperly increased his Guidelines offense level for obstruction of justice, failed to decrease that level to take into account his minimal involvement in the offense and his acceptance of responsibility, and refused to downward depart based on the aberrant nature of his conduct. In addition, as he was sentenced prior to the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005), he asks that his sentence be vacated and his case remanded for resentencing.

Although both parties urge us to rule on Le's various objections, we refuse to do

so. Pursuant to our ruling in United States v. Davis, 407 F.3d 162, 166 (3d Cir. 2005) (en banc), in those instances in which an appellant challenges a pre-Booker sentence we have determined that all sentencing issues should be remanded to the district courts to be decided in the first instance. See United States v. Boone, 458 F.3d 321, 332 & n.8 (3d Cir. 2006).

We will, therefore, vacate the judgment of sentence and remand for resentencing.