

NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-2160

UNITED STATES OF AMERICA

v.

TERRANCE BRANCH,

Appellant

Appeal from the United States District Court
For the District of Delaware

D.C. No.: 03-cr-00011

District Judge: Honorable Gregory M. Sleet

Argued December 13, 2004

Decided January 20, 2005

Certiorari Granted May 16, 2005

Judgment Vacated and Remanded from the
Supreme Court of the United States
May 24, 2005

Submitted Pursuant to Third Circuit LAR 34.1(a) July 8, 2005

Before: *NYGAARD, BECKER, and ROSENN, Circuit Judges.

(Filed: July 12, 2005)

OPINION OF THE COURT

ROSENN, Circuit Judge.

Appellant Terrance Branch was convicted of possessing a firearm in violation of 18 U.S.C. § 922(g)(1) in the United States District Court for the District of Delaware. He was tried by jury and subsequently sentenced to 120 months in prison. Branch timely appealed his conviction to this Court, but did not challenge his sentence.

We affirmed his conviction in United States v. Branch, No. 04-2160, slip op. at 4 (3d Cir. Jan. 20, 2005). The Supreme Court granted certiorari. In Branch v. United States, 125 S. Ct. 2281 (2005), the Supreme Court vacated the judgment and remanded for further consideration in light of United States v. Booker, 543 U.S. -- (2005).

After further consideration, we reaffirm the District Court's judgment of conviction for the reasons set forth in our opinion of January 20, 2005. However, in light of Booker, the appellant's sentence must be reviewed and its appropriateness ascertained. Because we believe that this is best determined by the District Court in the first instance, we will vacate the sentence and remand for resentencing in accordance with Booker. United States v. Davis, 407 F.3d 162, 165 (3d Cir. 2005) (en banc).

*The Honorable Judge Richard L. Nygaard assumed senior status on July 9, 2005.