

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-3095

UNITED STATES OF AMERICA

v.

LEONARD J. SICENAVAGE,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Criminal No. 03-cr-00370-1
(Honorable Ronald L. Buckwalter)

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 17, 2005

Before: SCIRICA, *Chief Judge*, VAN ANTWERPEN and COWEN, *Circuit Judges*

(Filed: October 31, 2005)

OPINION OF THE COURT

SCIRICA, *Chief Judge*.

Appellant Leonard Sicenavage pled guilty to one count of armed bank robbery in violation of 18 U.S.C. § 2113(d). The District Court found Sicenavage was subject to the career offender provision of the Federal Sentencing Guidelines and sentenced him to 212

months imprisonment, five years of supervised release, and a \$100 fine. Sicenavage challenges his sentence, but not his conviction. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

Sicenavage contends the District Court violated his Sixth Amendment rights when it found him to be a career offender under the Sentencing Guidelines. Sicenavage also claims the District Court erred, in light of *United States v. Booker*, 543 U.S. - -, 125 S. Ct. 738,755-56 (2005), in treating the sentencing scheme as mandatory rather than advisory.

In accordance with our decision in *United States v. Davis*, 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) (concluding defendants sentenced under the previously mandatory guidelines regime should have their sentencing challenge remanded to the District Court).¹

¹In light of our remand to the District Court, we need not address Sicenavage's claim that the District Court erred in sentencing him under the career offender provision of the Guidelines.