

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-4091

UNITED STATES OF AMERICA

v.

JOHNATHAN RYAN JACKSON,

Appellant

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal Action No. 05-cr-00004)
District Judge: Honorable Paul S. Diamond

Submitted Under Third Circuit LAR 34.1(a)
September 28, 2006

Before: McKEE and AMBRO, Circuit Judges
RESTANI,* Chief Judge

(Opinion filed November 9, 2006)

ORDER AMENDING PUBLISHED OPINION

AMBRO, *Circuit Judge*

IT IS NOW ORDERED that the published Opinion in the above case filed November 9, 2006, be amended as follows:

*Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation.

On page 13, the paragraph beginning four lines from the bottom of the page (beginning “The Eighth ...”) and carrying over to page 14 (ending “...discretionary denial of a departure motion.⁶”), is hereby deleted in full and replaced with the following paragraph. (Footnote 6 will remain at the end of this new paragraph.)

We have already ruled that, as it was pre-*Booker*, courts of appeals post-*Booker* have no authority to review discretionary denials of departure motions in calculating sentencing ranges. *See Cooper*, 437 F.3d at 332–33; *see also United States v. Burdi*, 414 F.3d 216, 220 (1st Cir. 2005); *United States v. Puckett*, 422 F.3d 340, 345 (6th Cir. 2005); *United States v. Frokjer*, 415 F.3d 865, 874–75 (8th Cir. 2005); *United States v. Sierra-Castillo*, 405 F.3d 932, 936–37 (10th Cir. 2005); *Crawford*, 407 F.3d at 1178. Not only because it is the precedent of this Court, but also because it is our purpose to have the calculation of Guidelines ranges track pre-*Booker* practice, we continue not to disturb a district court’s discretionary denial of a departure motion.⁶

On page 14, footnote 6, replace the first full paragraph with the following:

Our lack of review on this issue, however, goes no further than step two of *Gunter*, as step three requires our review of the sentence against the several § 3553(a) factors, only one of which is the Guidelines range. *See infra* Part II.B.

By the Court,

/s/ Thomas L. Ambro, Circuit Judge

Dated: November 17, 2006