

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1707

UNITED STATES OF AMERICA

vs.

FREDY BAUTISTA,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal No. 02-cr-00186-1)
District Judge: The Honorable John R. Padova

Submitted Under Third Circuit LAR 34.1(a)
June 21, 2004

Resubmitted on October 12, 2005, after
Remand from United States Supreme Court

Before: McKEE, NYGAARD, and CHERTOFF, Circuit Judges.*

*The Honorable Michael Chertoff resigned from the Court on February 16, 2005, and took no part in this decision. The opinion is filed by a quorum of the panel. 28 U.S.C. 46(d).

(Filed: December 16, 2005)

OPINION OF THE COURT

NYGAARD, Circuit Judge.

This matter is before us on remand by the United States Supreme Court. We affirmed Baustista's conviction and sentence on July 7, 2004. The Supreme Court subsequently vacated our judgment and remanded the matter to us for further consideration in light of its opinion in *United States v. Booker*, — U.S. — , 125 S.Ct. 738, 160 L.Ed.2d 621 (2005).

Because Bautista pleaded guilty, the sole issue raised in his original appeal concerned his sentence, as imposed by the District Court. Now, Bautista requests that we remand the matter to the District Court for re-sentencing in light of *Booker*. The Government does not object to a remand, reserving the right to assert that, in the exercise of discretion afforded by *Booker*, the District Court should re-impose the same sentence imposed previously.

Having determined that the sentencing issues Bautista raises are best determined by the District Court in the first instance, we will vacate that portion of our judgment that affirmed the judgment of sentence and remand this matter to the District Court for reconsideration and, if that court deems it appropriate, for re-sentencing in accordance with *Booker*.

For the foregoing reasons, we will affirm the conviction, vacate the sentence and remand this matter to the district court for re-sentencing.