

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-2001

UNITED STATES OF AMERICA,

vs.

RICHARD BRIGHTWELL,

Appellant.

On Appeal from the United States District Court
For the Eastern District of Pennsylvania

(D.C. No. 01-cr-00033)

District Judge: The Honorable R. Barclay Surrick

ARGUED JUNE 21, 2004

DECIDED JULY 28, 2004

ON REMAND from the Supreme Court of the United States
JANUARY 24, 2005

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

(Filed: April 19, 2005)

*. This case was submitted to the panel of Judges Nygaard, McKee, and Chertoff. Judge Chertoff resigned after submission, but before the filing of the opinion. The decision is filed by a quorum of the panel. 28 U.S.C. § 46(d).

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OPINION OF THE COURT

NYGAARD, Circuit Judge.

This matter is before us on remand by the United States Supreme Court. This Court, by opinion filed July 28, 2004, affirmed the District Court's judgment of conviction. On January 24, 2005, the Supreme Court granted the motion of Petitioner Richard Brightwell for leave to proceed in forma pauperis and granted the petition for writ of certiorari. The Court vacated the judgment of this Court and remanded the case for further consideration in light of *United States v. Booker*, 543 U.S. ___, 125 S. Ct. 738 (2005).

Upon further consideration as directed by the Supreme Court, we reaffirm all portions of our prior decision with respect to the conviction, including our conclusion that there was sufficient evidence for a reasonable jury to convict. On the other hand, we will vacate that portion of our judgment that affirmed the judgment of sentence and remand to the District Court for resentencing in accordance with *Booker*.

For the foregoing reasons, we will affirm Brightwell's conviction, vacate his sentence and remand to the District Court for resentencing.