

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 04-1156, 04-1809

UNITED STATES OF AMERICA

v.

NICHOLAS PAZ,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

(Dist. Court No. 02-cr-00441-1)

District Court Judge: Honorable Cynthia M. Rufe

(Dist. Court No. 03-cr-00629-1)

District Court Judge: Honorable James T. Giles, C.J.

Submitted pursuant to LAR 34.1(a)
January 18, 2005

Before: ALITO, McKEE, and SMITH, Circuit Judges.

(Opinion Filed: April 7, 2005)

OPINION OF THE COURT

PER CURIAM:

Nicholas Paz was convicted in one criminal case for armed robbery and in another for witness tampering. These two cases were consolidated for purposes of appeal because Paz's sentence in the armed robbery case was approximately 13 years longer than it might have been had he not been convicted in the witness tampering case. For reasons set out in our opinion and judgment of March 8, 2005, we found Paz's claims to be without merit and affirmed the judgments and sentences entered on January 9, 2004, in the armed robbery case, and March 24, 2004, in the witness tampering case.

For Paz's conviction on the charge of conspiracy to commit armed robbery and other offenses, he was sentenced to a term of imprisonment of 360 months, followed by the statutorily-mandated term of 84 months for violating 18 U.S.C. § 924(c)(1)(A)(ii). (The latter statute regards the carrying of a firearm in relation to a crime of violence.) For Paz's conviction on the charge of conspiracy to tamper with a witness, he was sentenced to a concurrent term of incarceration of 41 months, followed by supervised release. That latter sentence is to be served concurrent to the sentence for the armed robbery.

Paz moved for panel rehearing and has requested a remand for resentencing in the armed robbery case pursuant to the Supreme Court's decision in United States v. Booker, 125 S.Ct. 738 (2005). Having determined that the sentencing issues Paz raises are best determined by the District Court in the first instance, we granted panel rehearing as to resentencing, and now vacate the sentence entered in the armed robbery case on January

9, 2004, and remand for resentencing in accordance with *Booker*. We reaffirm, however, our prior holdings regarding the District Court's evidentiary rulings, and its rulings on Paz's Motion to Suppress, claim of privilege, and Motion to Dismiss the indictment.