

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-1910

UNITED STATES OF AMERICA

v.

MOHAMMAD AFZAL

Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 03-cr-00753)
District Judge: Honorable Dennis M. Cavanaugh

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
February 10, 2005

Before: BARRY, FUENTES, and VAN ANTWERPEN, Circuit Judges.

(Filed: March 25, 2005)

OPINION OF THE COURT

FUENTES, Circuit Judge.

Mohammad Afzal pled guilty to a two count information charging him in Count One with conspiring to commit bank fraud, and in Count Two with making, uttering and possessing counterfeit checks. The District Court sentenced Afzal, pursuant to the United States Sentencing Guidelines, to a 44 month term of imprisonment, and \$52,857.34 in total restitution. Afzal received a two level enhancement for obstruction of justice, and a three-level enhancement for committing the offense in count two of the information while on release from the offense in count one. On appeal, he challenges his sentence under *United States v. Booker*, 543 U.S. ___, 125 S. Ct. 738 (2005).

Having determined that the sentencing issues appellant raises are best determined by the District Court in the first instance, we will vacate the sentence and remand for resentencing in accordance with *Booker*. Afzal raises no challenge as to his conviction and accordingly has waived any argument in this regard. We will affirm the judgment of conviction.
