

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-2226

UNITED STATES OF AMERICA

v.

HASSAN CARNEY
a/k/a Boo-Boo
a/k/a Willie Timmons
a/k/a Shawn Carney
a/k/a William Butts

Hassan Carney,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Criminal No. 02-cr-00282
(Honorable John P. Fullam)

Submitted Pursuant to Third Circuit LAR 34.1(a)
November 8, 2006

Before: SCIRICA, *Chief Judge*, McKEE and STAPLETON, *Circuit Judges*

(Filed: November 16, 2006)

OPINION OF THE COURT

SCIRICA, *Chief Judge*.

Hassan Carney challenges his sentence in light of *United States v. Booker*, 543 U.S. 220 (2005). We will vacate the sentence and remand for resentencing. *United States v. Davis*, 407 F.3d 162, 164 (3d Cir. 2005) (en banc).

I.

Hassan Carney pled guilty to a single count of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). On February 25, 2003, the District Court sentenced Carney to 120 months in prison, a three-year term of supervised release, a \$1,000 fine, and a special assessment of \$100. At sentencing, the District Court determined Carney had an offense level of 25¹ and a criminal history category of VI, which rendered a sentencing range of 110 to 137 months. The District Court imposed the statutory maximum sentence of 120 months.

Carney filed a timely appeal contending he was not afforded the right to allocution and challenging other sentencing factors. We vacated the sentence and remanded on the issue of proper allocution. *See United States v. Carney*, 88 F. App'x 534, 536 (3d Cir. 2004). On April 19, 2004, the District Court re-sentenced Carney to 115 months in prison, with the other terms unchanged. Carney again filed a timely appeal.

II.

¹ The District Court found a base offense level of 24, then assessed a two-level enhancement for possession of a stolen firearm, a two-level enhancement for reckless endangerment of a police officer, and a three-level downward departure for acceptance of responsibility.

The District Court twice sentenced Carney under the mandatory Sentencing Guidelines framework in effect prior to *Booker*. In *Davis*, we established a policy to vacate and remand all sentences, except in limited circumstances, for “defendants sentenced under the previously mandatory regime whose sentences are being challenged on direct appeal.” *United States v. Davis*, 407 F.3d 162, 165 (3d Cir. 2005) (en banc). As we reasoned in *Davis*, we cannot determine whether the District Court would have imposed a different sentence under an advisory framework and therefore, the sentencing issues raised here are best determined by the District Court in the first instance. *Id.* at 164–65, 166.

III.

We will vacate the sentence and remand for resentencing in accordance with *Booker*. *Davis*, 407 F.3d at 165.