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States Court of Appeals  
for the Third Circuit

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10-26-2005

## USA v. Shough

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NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 05-1443

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UNITED STATES OF AMERICA

v.

LEONARD SHOUGH,  
*Appellant*

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On Appeal From the United States District Court  
For the Western District of Pennsylvania  
(D.C. No. 04-cr-00009E)  
District Judge: Honorable Maurice B. Cohill, Jr.

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Submitted Under Third Circuit LAR 34.1(a)  
October 21, 2005  
Before: SMITH, BECKER and NYGAARD, *Circuit Judges*

(Filed: October 26, 2005 )

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OPINION

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BECKER, *Circuit Judge*.

Pursuant to a plea agreement, appellant Leonard Shough entered a plea of guilty to

the first count of an eight-count indictment charging him with mail and wire fraud.

Shough was sentenced to 84 months' imprisonment followed by a term of three years' supervised release.

Appellant challenges his sentence under *United States v. Booker*, 543 U.S. —, 125 S. Ct. 738 (2005), the sentence having been based in part upon findings made by the District Court as to amount of loss and Shough's conduct in assuming another's identity. 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*. See *United States v. Davis*, 407 F.3d 162 (3d Cir. 2005) (*en banc*).