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2005 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

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7-12-2005

## USA v. Branch

Precedential or Non-Precedential: Non-Precedential

Docket No. 04-2160

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NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 04-2160  
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UNITED STATES OF AMERICA

v.

TERRANCE BRANCH,

Appellant  
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Appeal from the United States District Court  
For the District of Delaware  
D.C. No.: 03-cr-00011  
District Judge: Honorable Gregory M. Sleet  
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Argued December 13, 2004

Decided January 20, 2005

Certiorari Granted May 16, 2005

Judgment Vacated and Remanded from the  
Supreme Court of the United States  
May 24, 2005

Submitted Pursuant to Third Circuit LAR 34.1(a) July 8, 2005  
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Before: \*NYGAARD, BECKER, and ROSENN, Circuit Judges.

(Filed: July 12, 2005)  
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## OPINION OF THE COURT

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ROSENN, Circuit Judge.

Appellant Terrance Branch was convicted of possessing a firearm in violation of 18 U.S.C. § 922(g)(1) in the United States District Court for the District of Delaware. He was tried by jury and subsequently sentenced to 120 months in prison. Branch timely appealed his conviction to this Court, but did not challenge his sentence.

We affirmed his conviction in United States v. Branch, No. 04-2160, slip op. at 4 (3d Cir. Jan. 20, 2005). The Supreme Court granted certiorari. In Branch v. United States, 125 S. Ct. 2281 (2005), the Supreme Court vacated the judgment and remanded for further consideration in light of United States v. Booker, 543 U.S. -- (2005).

After further consideration, we reaffirm the District Court's judgment of conviction for the reasons set forth in our opinion of January 20, 2005. However, in light of Booker, the appellant's sentence must be reviewed and its appropriateness ascertained. Because we believe that this is best determined by the District Court in the first instance, we will vacate the sentence and remand for resentencing in accordance with Booker. United States v. Davis, 407 F.3d 162, 165 (3d Cir. 2005) (en banc).

\*The Honorable Judge Richard L. Nygaard assumed senior status on July 9, 2005.