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USA v. Guzman

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-3068

UNITED STATES OF AMERICA

v.

ROBINSON GUZMAN,
Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(Dist Court No. 02-CR-00761)
District Court Judge: Hon. John C. Lifland

Submitted Under Third Circuit LAR 34.1(a)
November 1, 2004

Before: ALITO, BARRY, and FUENTES Circuit Judges.

(Filed: June 15, 2005)

OPINION OF THE COURT

PER CURIAM:

The defendant in this case pled guilty to a one-count indictment that charged him with conspiring to distribute and to possess with intent to distribute more than 50 grams of crack cocaine, in violation of 21 U.S.C. § 846. The District Court sentenced the defendant to 120 months of imprisonment.

The defendant filed a pro se notice of appeal, and defense counsel submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and moved to withdraw. Following the decision in United States v. Booker, 125 S.Ct. 738 (2005), we issued a per curiam opinion. We identified only one non-frivolous issue, namely, that the District Court had sentenced the defendant on the assumption that the Sentencing Guidelines were mandatory. We vacated the sentence imposed by the District Court and remanded for resentencing in accordance with Booker, and we denied counsel's motion to withdraw.

We later granted the government's petition for panel rehearing, and in light of the fact that the mandatory minimum sentence prescribed by statute for the offense for which the defendant was convicted is 10 years of imprisonment, see 21 U.S.C. §§ 841(b)(1)(A) and 846, we now conclude that the appeal does not present any non-frivolous issues. We thus dismiss the appeal and grant counsel's motion to withdraw.