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USA v. Rivera

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-3097

UNITED STATES OF AMERICA;

v.

DANIEL RIVERA,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 02-cr-00553)
District Judge: Honorable Petrese B. Tucker

Submitted Under Third Circuit LAR 34.1(a)
October 25, 2004

Before: SCIRICA, *Chief Judge*, FISHER and ALDISERT, *Circuit Judges*.

(Filed: April 5, 2005)

OPINION OF THE COURT

FISHER, *Circuit Judge*.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), appointed counsel for the Appellant Daniel Rivera originally filed a motion to withdraw from representation and an *Anders* brief, concluding, *inter alia*, that the sentence imposed on Appellant by the

District Court was legal. The appeal was held C.A.V. pending *United States v. Booker*, 543 U.S. —, 125 S. Ct. 738 (2005), and Appellant’s counsel subsequently informed us by letter dated February 22, 2005, that Appellant now challenges his sentence under *Booker*. We interpret this letter to withdraw counsel’s earlier filed motion to withdraw from representation, and accordingly do not address whether the *Anders* brief previously submitted met the *Anders* standard.¹

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*.

¹We note, however, some dissatisfaction with the fact that the *Anders* brief failed to even acknowledge the U.S.S.G § 3B1.2 issue, which was clearly important at sentencing and which formed the basis for the informal brief submitted by Appellant after the *Anders* brief was filed.