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USA v. Alvarez

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-3959

UNITED STATES OF AMERICA

v.

MAICOL ALVAREZ

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 01-cr-00363-16)
District Judge: Honorable Berle M. Schiller

Submitted Under Third Circuit L.A.R. 34.1(a)
February 10, 2005

Before: BARRY, FUENTES, and VAN ANTWERPEN,
Circuit Judges.

(Filed: March 25, 2005)

OPINION OF THE COURT

FUENTES, Circuit Judge.

Maicol Alvarez challenges his sentence for conspiracy to distribute cocaine and crack

cocaine. He argues that the downward departure for his cooperation is not sufficiently significant, that the District Court failed to consider all relevant factors in making the departure, that the District Court failed to consider one of his departure requests, that the District Court made an arithmetical error in calculating his sentence, and that he is entitled to resentencing under United States v. Booker, 543 U.S. ___, 125 S. Ct. 738 (2005).

Having determined that issues with respect to Booker are best determined by the District Court in the first instance, we vacate the sentence and remand for resentencing in accordance with that opinion. Because we vacate the sentence, we do not reach Alvarez's non-Booker sentencing challenges. We note, however, that any challenge to the conviction has been waived, and we therefore affirm the conviction.