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for the Third Circuit

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3-17-2005

## USA v. Grass

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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No. 02-2994

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UNITED STATES OF AMERICA

v.

NICHOLAS GRASS

a/k/a

NICKY GRASSO

Nicholas Grass,

Appellant

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Crim. No. 00-cr-00120-1)  
District Judge: Hon. Eduardo C. Robreno

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Submitted Under Third Circuit LAR 34.1(a) March 8, 2004

Decided March 30, 2004

On Remand from the Supreme Court of the United States  
January 24, 2005

Before: SLOVITER, NYGAARD, Circuit Judges and OBERDORFER, District Judge\*

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\* Hon. Louis F. Oberdorfer, United States District Court for the District of Columbia, sitting by designation.

(Filed: March 17, 2005)

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OPINION

SLOVITER, Circuit Judge.

This matter is before us on remand by the United States Supreme Court. This court, by opinion filed March 30, 2004, affirmed the District Court's judgment of conviction and sentence. On January 24, 2005, the Supreme Court granted the motion of Petitioner Nicholas Grass a/k/a Nicky Grasso for leave to proceed in forma pauperis, and granted his petition for writ of certiorari. The Court vacated the judgment of this court and remanded the case to this court for further consideration in light of Booker v. United States, 125 S. Ct. 738, 543 U.S. \_\_\_ (2005). Counsel for Appellant, pursuant to the opportunity afforded by this court, has requested that we remand the matter to the District Court for resentencing.

Upon further consideration as directed by the Supreme Court, we reaffirm all portions of our prior decision with respect to the conviction, including our conclusions that there was sufficient evidence to support Grass' conviction for conspiracy to distribute methamphetamine, that Grass was not deprived of his Sixth Amendment right to counsel when the District Court disqualified his chosen attorney, and that Grass was not prejudiced by the mistaken delivery of a draft copy of the jury's instructions during deliberations. On the other hand, we will vacate that portion of our judgment that

affirmed the judgment of sentence and remand to the District Court for reconsideration and, if that court deems it appropriate, for resentencing in light of Booker v. United States, 125 S. Ct. 738, 543 U.S. \_\_\_\_ (2005).

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