

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 04-3068**

**September Term, 2005**

**03cr00458-01**

**Filed On: April 21, 2006** [964162]

United States of America,  
Appellee

v.

Anthony Thomas,  
Appellant

**BEFORE:** Ginsburg, Chief Judge, and Sentelle and Rogers,\* Circuit Judges

## **J U D G M E N T**

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof; and of appellant's petition for rehearing and the response thereto, it is

**ORDERED and ADJUDGED** that the judgment of conviction be affirmed in accordance with the opinion issued November 18, 2005, the sentence be vacated, and the case be remanded for resentencing in accordance with *United States v. Booker*, 543 U.S. 220 (2005). Because the parties agree that the record establishes a "reasonable likelihood that the sentence would have been lower" had the district court not applied the Sentencing Guidelines as though they were mandatory, *United States v. Gomez*, 431 F.3d 818, 824 (2005), a remand for resentencing is warranted. It is

**FURTHER ORDERED** that the petition for rehearing be denied in all other respects.

The Clerk is directed to issue the mandate forthwith.

## **Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY:  
Michael C. McGrail  
Deputy Clerk

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\* Circuit Judge Rogers would grant the petition for rehearing.