

June 7, 2005

PATRICK FISHER
Clerk

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CORDELL NICHOLS also known as
Quindell Johnson,

Defendant - Appellant.

No. 03-3284

ORDER ON REMAND FROM
THE UNITED STATES SUPREME COURT
(S. Ct. No. 04-7292)
(D.C. NO. 02-CR-40098-01-JAR)

Before **TACHA** , Chief Judge, **ANDERSON** and **BALDOCK** , Circuit Judges.

ANDERSON , Circuit Judge.

Defendant/Appellant Cordell Nichols was found guilty following a jury trial of one count of possession with intent to distribute approximately 4.6 kilograms of heroin, in violation of 21 U.S.C. § 841(a), and one count of conspiracy to distribute in excess of one kilogram of heroin, in violation of 21 U.S.C. § 846. He was sentenced to 360 months' imprisonment, followed by ten

years of supervised release. We affirmed his conviction. ¹ United States v. Nichols, 374 F.3d 959 (10th Cir. 2004), vacated by 125 S. Ct. 1082 (2005). The Supreme Court summarily reversed and remanded our decision for further consideration in light of United States v. Booker, 125 S. Ct. 738 (2005). Nichols v. United States, 125 S. Ct. 1082 (2005). We requested that the parties file supplemental briefs on the applicability of Booker and subsequent Tenth Circuit cases.

The government and the defendant have both agreed that this case should be remanded to the district court for resentencing, and the government filed “Appellee’s Confession of Booker Error and Motion to Remand for Resentencing.” Although we note that appellant submitted an overlength brief without seeking permission, we accept it as filed. We GRANT the government’s motion to remand.

Accordingly, our previous opinion affirming Nichols’ conviction is REINSTATED, and the case is REMANDED to the district court for resentencing.

¹Nichols did not challenge his sentence in his appeal to this court.