

2005 WL 388296 (9th Cir.(Mont.))

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United States Court of Appeals, Ninth Circuit.
UNITED STATES OF AMERICA, Plaintiff--Appellee,
v.
Darin William EWALT, Defendant--Appellant.
No. 04-30035.
D.C. No. CR-03-00051-RFC.
Submitted Feb. 7, 2005. [\[FN**\]](#)

[FN**](#) This panel unanimously finds this case suitable for decision without oral argument.
See [Fed. R.App. P. 34\(a\)\(2\)](#).

Decided Feb. 18, 2005.

[C. Ed Laws](#), Esq., Office of the U.S. Attorney, Billings, MT, for Plaintiff-Appellee.
Robert Kelleher, Esq., Kelleher Law Office, Billings, MT, for Defendant-Appellant.

Appeal from the United States District Court for the District of Montana. [Richard F. Cebull](#), District Judge, Presiding.

Before [FERNANDEZ](#), [GRABER](#), and GOULD, Circuit Judges.

MEMORANDUM [\[FN*\]](#)

[FN*](#) This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by [Ninth Circuit Rule 36-3](#).

***1** Darin William Ewalt appeals from his jury-trial conviction and sentence for conspiracy to manufacture, manufacturing, distribution of methamphetamine, in violation of [21 U.S.C. §§ 841\(a\)\(1\)](#) and [846](#), unlawful user or addict in possession of a firearm, in violation of [18 U.S.C. § 922\(g\)\(3\)](#), and possession of a firearm during and in relation to a drug trafficking crime, in violation of [18 U.S.C. § 924\(c\)\(1\)\(A\)\(i\)](#).

Pursuant to [Anders v. California](#), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), counsel for Ewalt has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. Ewalt has not filed a pro se supplemental brief.

We have conducted an independent review of the record pursuant to [Penson v. Ohio](#), 488 U.S. 75, 83, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988). We affirm the conviction. We vacate the sentence and remand for resentencing in light of [United States v. Booker](#), --- U.S. ----, ----, 125 S.Ct. 738, 769, --- L.Ed.2d ----, ---- (2005) and [United States v. Ameline](#), No. 02-30326, 2005 WL 350811 (9th Cir. Feb.9, 2005).

Counsel's motion to withdraw as counsel on appeal is denied.

The conviction is AFFIRMED, the sentence is VACATED and REMANDED.

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- [04-30035](#) (Docket) (Jan. 27, 2004)

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