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Citation: **2005 U.S. App. LEXIS 1923**

*2005 U.S. App. LEXIS 1923, \**

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. CARL JOSEPH MCCOUN, Defendant - Appellant.

No. 04-30103

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

2005 U.S. App. LEXIS 1923

February 7, 2005 \*\*, Submitted, Seattle, Washington

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).  
February 7, 2005, Filed

**NOTICE: [\*1]** RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

**PRIOR HISTORY:** Appeal from the United States District Court for the District of Montana. D.C. No. CR-02-00025-RFC. Richard F. Cebull, District Judge, Presiding. [United States v. McCoun, 76 Fed. Appx. 199, 2003 U.S. App. LEXIS 19854 \(2003\)](#)

**DISPOSITION:** SENTENCE VACATED and REMANDED.

**COUNSEL:** For UNITED STATES OF AMERICA, Plaintiff - Appellee: William W. Mercer, Esq., USBI - OFFICE OF THE U.S. ATTORNEY, Billings, MT.

For CARL JOSEPH MCCOUN, Defendant - Appellant: Robin B. Hammond, Esq., FDMT - FEDERAL DEFENDERS OF MONTANA, Billings, MT.

**JUDGES:** Before: HAWKINS, McKEOWN, and BERZON, Circuit Judges.

**OPINION:** MEMORANDUM \*

----- Footnotes -----

\* 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](#).

----- End Footnotes-----

We vacate McCoun's sentence and remand for resentencing in accordance with the Supreme Court's decision in [Booker v. United States, 160 L. Ed. 2d 621, 125 S. Ct. 738 \(2005\)](#).

SENTENCE **[\*2]** VACATED and REMANDED.






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