

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-12499
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUNE 7, 2006
THOMAS K. KAHN
CLERK

D.C. Docket No. 02-14072-CR-DMM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTHONY LATERZA,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Florida

(June 7, 2006)

ON REMAND FROM THE UNITED STATES SUPREME COURT

Before TJOFLAT, BLACK and BARKETT, Circuit Judges.

PER CURIAM:

This case is on remand from the Supreme Court for further consideration in light of United States v. Booker, 543 U.S. 220, 125 S.Ct. 738 (2005). Laterza v.

United States, 543 U.S. 1106, 125 S.Ct. 1006 (Mem.) (2005). In our previous decision, United States v. Laterza, No. 03-12499 (11th Cir. March 17, 2004) (unpublished opinion), which the Supreme Court has vacated, we affirmed the 60 months prison sentence appellant received for manufacturing more than 100 marijuana plants, in violation of 21 U.S.C. § 841(a)(1). Appellant now contends that Booker requires that we vacate his sentence and remand the case for resentencing because the district court sentenced him pursuant to the mandatory guidelines sentencing scheme based on facts neither admitted by him nor found by the jury beyond a reasonable doubt.

We reject appellant's contention. First, appellant did not raise it in his initial brief on appeal, and his failure is fatal. See, e.g., United States v. Ardley, 242 F.3d 989 (11th Cir. 2001). Second, and alternatively, the district court did not commit a Booker error at all. The court sentenced appellant to the mandatory minimum sentence required by law – 60 months imprisonment – because the jury found beyond a reasonable doubt that appellant's offense involved more than 100 marijuana plants. See 21 U.S.C. § 841(b)(1)(B).¹

We have considered this appeal in light of United States v. Booker, and find

¹ Appellant did not qualify for the “safety-valve” provision of 18 U.S.C. § 3553(f); U.S.S.G. § 5C1.2. United States v. Laterza, No-03-12499, at 6-7.

no basis for disturbing our previous decision. That decision is therefore reinstated².

SO ORDERED.

²All outstanding motions are denied as MOOT in light of the court's ruling.