

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-14301
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT December 28, 2006 THOMAS K. KAHN CLERK
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D. C. Docket No. 04-00005-CR-HL-6

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNNIE REVELS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

(December 28, 2006)

Before ANDERSON, BARKETT and PRYOR, Circuit Judges.

PER CURIAM:

Johnnie Revels appeals his mandatory-minimum sentence for possession with intent to distribute cocaine base. 21 U.S.C. § 841(a)(1), (b)(1)(A)(iii). We affirm.

I. BACKGROUND

Revels pleaded guilty to conspiracy to possess with intent to distribute more than 50 grams of cocaine base. Under the written plea agreement, Revels waived any Apprendi or Booker objections and acknowledged that he was subject to a mandatory minimum sentence of 10 years, and the government stipulated that the drug quantity attributable to Revels was between 35 and 50 grams of cocaine base. This quantity resulted in a base offense level of 30. Revels's criminal history category of III was based in part on a Georgia felony conviction for cocaine possession. The advisory Guideline range was 121 to 150 months, and the sentencing judge imposed the mandatory minimum sentence of 10 years.

II. STANDARD OF REVIEW

We review issues raised for the first time on appeal for plain error. See United States v. Martinez, 407 F.3d 1170, 1173 (11th Cir. 2005). We will reverse only if there is (1) error that is (2) plain that (3) affects substantial rights and (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings. Id.

III. DISCUSSION

Revels argues that, because the government stipulated to a drug quantity of 35 to 50 grams, the mandatory minimum sentence should have been 5 years. See 21 U.S.C. § 841(b)(1)(B)(iii). The mandatory minimum sentence for possession

with intent to distribute 50 grams or more of cocaine base, the offense to which Revels pleaded guilty, is 10 years. Id. § 841(b)(1)(A)(iii). In addition, Revels was subject to a 10-year mandatory minimum sentence for possessing with intent to distribute more than 5 grams of cocaine base after a prior conviction for a felony drug offense. Id. § 841(b)(1)(B). The district court did not plainly err when it imposed the mandatory minimum sentence.

IV. CONCLUSION

Revels's sentence is

AFFIRMED.