

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4740

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

GILBERT LEANDER DAVIS, JR.,

Defendant - Appellant.

No. 04-4970

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DANIEL PAUL DEBNER,

Defendant - Appellant.

Appeals from the United States District Court for the District of South Carolina, at Florence. Terry L. Wooten, District Judge. (CR-04-167)

Submitted: May 31, 2006

Decided: June 30, 2006

Before MICHAEL, MOTZ, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Nathaniel Roberson, Columbia, South Carolina; W. James Hoffmeyer, LAW OFFICE OF W. JAMES HOFFMEYER, Florence, South Carolina, for Appellants. Jonathan S. Gasser, Acting United States Attorney, Alfred W. Bethea, Jr., Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Gilbert Leander Davis, Jr., and Daniel Paul Debner appeal from their sentences imposed pursuant to their guilty pleas to conspiracy to possess with intent to distribute a quantity of cocaine. Appellants assert that the district court erred under United States v. Booker, 543 U.S. 220 (2005), by sentencing them for crack cocaine, because they did not admit to a conspiracy involving crack cocaine. In addition, Davis asserts that his firearm enhancement violated Booker.

We agree that there was Booker error. Appellants were sentenced under the mandatory guideline scheme and received more than the maximum sentence permitted by the facts admitted. See United States v. Hughes, 401 F.3d 540, 547 (4th Cir. 2005). However, because the district court imposed identical, alternative sentences in the event that the guidelines were found to be non-binding, any error was harmless. See United States v. Shatley, 448 F.3d 264, 266-67 (4th Cir. 2006). The district court followed our recommendation in United States v. Hammoud, 381 F.3d 316 (4th Cir.), vacated, 543 U.S. 1097 (2005); its alternative sentences were within the range recommended by the sentencing guidelines, and we take the district court at its word when it stated that it would impose the same sentences under the advisory guideline system. Shatley, 448 F.3d at 267-68.

Accordingly, we affirm Appellants' sentences. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED