

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-4835

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEXTER THEATRA THOMAS,

Defendant - Appellant.

On Remand from the Supreme Court of the United States.
(S. Ct. No. 06-6853)

Submitted: April 16, 2008

Decided: May 1, 2008

Before NIEMEYER, MICHAEL, and GREGORY, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

John J. Korzen, Kernersville, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Sandra J. Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dexter Theatra Thomas pled guilty, pursuant to a written plea agreement, to one count of distributing crack cocaine. In the presentence investigation report ("PSR"), Thomas was found responsible for distributing 229.5 grams of crack cocaine resulting in a base offense level of 34. However, because he qualified as a career offender, Thomas' adjusted offense level was 37. See U.S. Sentencing Guidelines Manual (USSG) § 4B1.1 (2004). Deducting three points for acceptance of responsibility, Thomas' total offense level was 34. No other adjustments were made. Based on a total offense level of 34 and a Criminal History Category of VI, Thomas' Guidelines range was 262-327 months imprisonment.

Thomas was sentenced following the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005). The district court applied the holding of Booker and sentenced Thomas to 270 months imprisonment. In both his sentencing objections in the district court and on appeal, Thomas challenged the 100:1 crack to powder cocaine ratio. On appeal, Thomas further argued that the district court failed to fully account for all the factors enumerated in 18 U.S.C. § 3553(a) (2000). Rejecting these claims, we affirmed. See United States v. Thomas, No. 05-4835 (4th Cir. June 26, 2006) (unpublished).

The Supreme Court granted Thomas' petition for writ of certiorari, vacated this court's judgment and remanded the case for

further consideration in light of Kimbrough v. United States, 128 S. Ct. 558 (2007) (holding that a sentencing judge is free to consider the disparity between the Guidelines' treatment of crack and powder cocaine offenses in determining whether, "in the particular case, a within-Guidelines sentence is 'greater than necessary' to serve the objectives of sentencing." Id. at 564 (citing 18 U.S.C. § 3553(a)).

Upon review of the record, we conclude that resentencing is warranted. Therefore, we vacate Thomas' sentence and remand to the district court for resentencing in light of Kimbrough. 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.

VACATED AND REMANDED