

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 13, 2010

Lyle W. Cayce
Clerk

No. 09-60791

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ERNESTO V. BELL,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 2:09-CR-9-1

Before GARWOOD, DENNIS and ELROD, Circuit Judges.

PER CURIAM:*

Ernesto V. Bell, federal prisoner # 13214-045, appeals the 36-month sentence imposed following revocation of the term of supervised release imposed following his conviction in the Western District of Missouri for conspiracy to distribute 50 grams or more of cocaine base. Bell argues that the sentence imposed is unreasonable.

This court has declined to decide the appropriate standard of review for a sentence imposed upon revocation of supervised release in the wake of *Booker*.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

United States v. McKinney, 520 F.3d 425, 428 (5th Cir. 2008). There is no need to do so in this case, as the 36-month sentence imposed in this case is neither unreasonable nor plainly unreasonable.

The term of imprisonment imposed by the district court in Bell's case was not in violation of law. *See* 21 U.S.C. § 841(b)(1)(A)(iii); 18 U.S.C. §§ 3559(a)(1), 3583(e)(3). Although the sentence constitutes a substantial upward departure from the advisory guidelines range, the sentence is not unreasonable or plainly unreasonable. The record in this case reflects that the district court considered the policy statements contained in the Guidelines and the 18 U.S.C. § 3553(a) factors in fashioning the sentence and adequately explained the reason for the sentence selected. *See United States v. Mathena*, 23 F.3d 87, 90-93 (5th Cir. 1994); *United States v. Neal*, 212 F. App'x 328, 332 (5th Cir. 2007). Accordingly, the judgment is AFFIRMED.