

April 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50673
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT LEE MORRISON,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:00-CR-62-ALL-JRN

Before JONES, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Robert Lee Morrison, federal prisoner # 04133-180, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence based on Amendment 599 to the United States Sentencing Guidelines. Morrison pleaded guilty to possession with intent to distribute crack cocaine, in violation of 21 U.S.C. § 841(a)(1), and possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Morrison argues that a sentence enhancement for possession of a weapon constituted impermissible double counting in violation of Amendment 599. Morrison further contends that his sentence is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000), and Blakely v. Washington, 124 S. Ct. 2531 (2004). In light of Blakely and the Supreme Court's recent decision in United States v. Booker, 125 S. Ct. 738 (2005), Morrison has filed a motion seeking the recall of this court's mandate affirming Morrison's direct criminal appeal (No. 00-51218). Morrison further requests that his case be remanded for resentencing.

Amendment 599, which amended the commentary to U.S.S.G. § 2K2.4, applies to convictions under 18 U.S.C. § 844(h) and 18 U.S.C. §§ 924(c) and 929(a). Morrison pleaded guilty to violating 18 U.S.C. § 922(g)(1), and his guideline sentencing range was computed under U.S.S.G. § 2D1.1, based upon his drug conviction. Accordingly, Amendment 599 does not apply to Morrison's sentence. Morrison's Apprendi, Blakely, and Booker arguments are not cognizable in the context of a 18 U.S.C. § 3582(c)(2) motion. See United States v. Shaw, 30 F.3d 26, 29 (5th Cir. 1994).

AFFIRMED; MOTION TO RECALL MANDATE DENIED.