

August 16, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-30577
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRE BENNETT,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
No. 1:03-CR-10009-ALL

Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Andre Bennett appeals the sentence that resulted from the revocation of the supervised release imposed following his conviction of distribution of cocaine base. Bennett asserts that the sentence is above the advisory sentencing guidelines range and is plainly unreasonable.

Since United States v. Booker, 543 U.S. 220 (2005), we have

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

yet to determine whether sentences imposed following the revocation of supervised release should be reviewed under the plainly unreasonable standard previously applicable or the unreasonableness standard set forth in Booker, and we need not do so in this case, because the sentence passes muster under either standard. See United States v. Hinson, 429 F.3d 114, 119-20 (5th Cir. 2005). The sentencing guidelines pertaining to supervised release revocations have always been advisory, and the sentence is less than the statutory maximum. See id.; 18 U.S.C. § 3583(e)(3). Bennett's most serious supervised release violation was a drug offense involving more than 400 grams of cocaine and 600 grams of cocaine base. The original sentence was the result of a downward departure from the applicable guideline range, a factor that can warrant an upward departure under the guidelines. See U.S.S.G. § 7B1.4, comment. (n.4). The sentence was neither unreasonable nor plainly unreasonable. See Hinson, 429 F.3d at 120.

AFFIRMED.