

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4902

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CURTIS DAVIS, JR., a/k/a Billy Dee,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Patrick Michael Duffy, District Judge. (CR-03-391)

Submitted: January 26, 2007

Decided: February 20, 2007

Before WILLIAMS and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

William N. Nettles, Columbia, South Carolina, for Appellant.
Jonathan S. Gasser, United States Attorney, Carlton R. Bourne, Jr.,
Assistant United States Attorney, Charleston, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Curtis Davis, Jr., was found guilty by a jury of conspiracy to possess with intent to distribute and distributing five kilograms or more of cocaine and fifty grams or more of cocaine base (Count 1) and money laundering under 18 U.S.C. § 1956(a)(1) (2000) (Count 11). Adopting the recommendations in the presentence report, the district court sentenced Davis to a life sentence for Count 1 and a 240-month concurrent sentence for Count 11. At the sentencing hearing, the district court stated that, even if the Federal Sentencing Guidelines were to be found "nonbinding," it would give Davis an identical alternative sentence. (J.A. 59). The court referenced the 18 U.S.C.A. § 3553(a) (West 2000 & Supp. 2006) factors in its criminal judgment. On appeal, Davis alleges he was sentenced in violation of Blakely v. Washington, 542 U.S. 296 (2004), and United States v. Booker, 543 U.S. 220 (2005). For the reasons that follow, we affirm.

Davis alleges that he was sentenced based on facts not found by the jury or admitted by him in violation of Blakely and Booker. Because Davis timely objected on this basis in the district court, we review his claim for harmless error.* United States v. Rodriguez, 433 F.3d 411, 415-16 (4th Cir. 2006); United States v.

*We offer no criticism of the district judge, who followed the law and procedure in effect at the time Davis was sentenced.

Mackins, 315 F.3d 399, 405 (4th Cir. 2003). We find no harmless error, however, as the district court stated it would have given Davis an identical sentence even if the Sentencing Guidelines were found to be advisory. United States v. Shatley, 448 F.3d 264, 267-68 (4th Cir.), cert. denied, 127 S. Ct. 310 (2006) (holding that in light of district court's finding that it would impose an identical alternative sentence, any Sixth Amendment Booker error was harmless).

Accordingly, we affirm Davis' sentence. 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