

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-5022

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JASON OLSON BETHEA,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern
District of Virginia, at Newport News. Rebecca Beach Smith,
District Judge. (CR-04-95)

Submitted: March 25, 2005

Decided: April 8, 2005

Before WILLIAMS, TRAXLER, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Bryan L. Saunders, Newport News, Virginia, for Appellant. Paul J.
McNulty, United States Attorney, Michael J. Elston, Eric M. Hurt,
Assistant United States Attorneys, Newport News, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Jason Olson Bethea pled guilty to one count of escape from custody in violation of 18 U.S.C. § 751(a) (2000). At sentencing, the district court granted the Government's motion and imposed an upward departure and sentenced Bethea to five years' imprisonment, the statutory maximum for the offense. The court, after considering the guidelines and the factors under 18 U.S.C.A. § 3553(a) (West 2000 & Supp. 2004), stated that even if the guidelines were not mandatory, it would impose the same sentence. On appeal, Bethea cites United States v Booker, 125 S. Ct. 738 (2005), and Blakely v. Washington, 124 S. Ct. 2531 (2004), for the proposition that the court erred in imposing a sentence under the sentencing guidelines. Bethea further argues the upward enhancement was improper. We affirm.

Because the district court's alternate sentence was based upon the guidelines and the factors under § 3553(a) and was not greater than the statutory maximum, we find the upward departure and the five year sentence to be harmless error. We further find the sentence reasonable. Booker, 125 S. Ct. at 764-67 (Breyer, J., opinion of the Court).

Accordingly, we affirm the 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