

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 04-4496

FILED

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AUG 01 2008

LEONARD GREEN, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR THE
MICHAEL J. ROBERTS,)	NORTHERN DISTRICT OF OHIO
)	
Defendant-Appellant.)	

Before: DAUGHTREY, GILMAN, and ROGERS, Circuit Judges.

ROGERS, Circuit Judge. This case is part of a consolidated appeal involving thirteen defendants who were members of the Outlaw Motorcycle Club (“OMC”), an international motorcycle club with chapters across the country and around the world. In 1997, the Federal Bureau of Investigation and state law enforcement agencies began an investigation into the Green region of the OMC, which consists of chapters in Dayton, Ohio; Fort Wayne, Indiana; Louisville, Kentucky; Indianapolis, Indiana; and Oklahoma City, Oklahoma. As a result of the investigation, a grand jury in the Northern District of Ohio returned a 40-count indictment in 2003 charging the defendants with various federal offenses, including Racketeer Influenced and Corrupt Organizations Act (“RICO”), drug trafficking, and firearms offenses.

Unlike many of his co-conspirators, defendant Michael J. Roberts chose not to go to trial. Roberts pled guilty to and was convicted of one count of conspiracy to possess with intent to distribute narcotics in violation of 21 U.S.C. § 846. In the plea agreement, Roberts stipulated that

No. 04-4496
USA v. Roberts

he conspired to possess with intent to distribute at least 500 grams but less than 1.5 kilograms of a mixture or substance containing methamphetamine. This subjected Roberts to a mandatory minimum sentence of 120 months' imprisonment under 21 U.S.C. § 841(b)(1)(A). On November 22, 2004, Roberts was sentenced to the statutory minimum of 120 months' imprisonment.

Roberts argues on appeal that the district court erred in calculating his criminal history category and guidelines range. We need not explore the district court's guidelines calculations, however, because Roberts was properly sentenced to the mandatory minimum pursuant to § 841(b)(1)(A). Because Roberts received the minimum sentence that the district court could statutorily impose based on his guilty plea, Roberts cannot receive a decreased sentence. Thus, any error in the district court's guidelines calculations would not affect Roberts's sentence. Roberts also argues that the district court committed *Booker* error in treating the guidelines as mandatory. Again, because Roberts was sentenced based on the statutory minimum, application of *Booker* would not result in a decreased sentence. *Cf. United States v. Joiner*, 123 F. App'x 681, 683 (6th Cir. 2005).

For the foregoing reasons, Roberts's sentence is affirmed.