

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-3615

United States of America,

Appellee,

v.

Mario L. Cunningham,

Appellant.

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Appeal from the United States
District Court for the Eastern
District of Arkansas.

[UNPUBLISHED]

Submitted: March 9, 2009

Filed: April 1, 2009

Before GRUENDER, ARNOLD, and BENTON, Circuit Judges.

PER CURIAM.

Mario Cunningham appeals from the sentence of five years' imprisonment that the district court¹ imposed after Mr. Cunningham pleaded guilty to conspiracy to distribute five grams of cocaine base, *see* 21 U.S.C. §§ 841, 846. Mr. Cunningham raises only one issue on appeal, namely, whether the district court erred in denying him safety-valve relief under 18 U.S.C. § 3553(f). We affirm.

¹The Honorable James M. Moody, United States District Judge for the Eastern District of Arkansas.

Mr. Cunningham's sentence was the minimum permitted by the applicable statute, unless he could demonstrate that the district court was authorized to sentence him to a lesser term based on § 3553(f), *see United States v. Sanchez*, 475 F.3d 978, 980 (8th Cir. 2007). Among the things that Mr. Cunningham had to show to entitle him to this dispensation was that he had "truthfully provided to the Government all information and evidence [he] has concerning the offense or offenses that were part of the same course of conduct." *See* 18 U.S.C. § 3553(f)(5); *see also* U.S.S.G. § 5C1.2(5). The district court gave Mr. Cunningham a chance at his public sentencing hearing and *in camera* to carry this burden; the court listened to his testimony but concluded that Mr. Cunningham had not been completely forthcoming and so denied him relief.

We have carefully read the transcripts of the proceedings below and conclude that the district court did not err in holding that Mr. Cunningham did not carry his burden. We note particularly that the court was unconvinced that Mr. Cunningham, after having dealt in drugs "over a long period of time," could not "recall with better specificity at least some of the customers he had." We detect no error in this logic and in the district court's conclusion that Mr. Cunningham had not been entirely forthright about matters that were material and relevant to his offense.

Affirmed.
