

**APPENDICES**

**APPENDIX A**

(COURT OF APPEALS OPINION)

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 19-6872**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

COURTNEY OMAR BOYD, a/k/a Omar,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Mark S. Davis, Chief District Judge. (4:06-cr-00005-MSD-FBS-3)

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Submitted: August 20, 2019

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Decided: August 23, 2019

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Before FLOYD and RUSHING, Circuit Judges, and SHEDD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Courtney Omar Boyd, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Courtney Omar Boyd appeals the district court's order denying his motion for a sentence reduction pursuant to section 404 of the First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222 (2018). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *United States v. Boyd*, No. 4:06-cr-00005-MSD-FBS-3 (E.D. Va. June 7, 2019). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

***AFFIRMED***

**APPENDIX B**

(VERDICT FORM)

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division

FILED  
IN OPEN COURT

AUG 30, 2007  
cje

CLERK, U.S. DISTRICT COURT  
NORFOLK, VA

UNITED STATES OF AMERICA :

v. :

CRIMINAL ACTION NO. 4:06CR5

COURTNEY OMAR BOYD, :

Defendant. :

**VERDICT FORM**

(Refer to the Indictment for a description of the charges)

WE, THE JURY, MAKE THE FOLLOWING FINDINGS WITH RESPECT TO THE CHARGES AGAINST THE DEFENDANT, COURTNEY OMAR BOYD:

Count 2:

NOT GUILTY

✓  
GUILTY

Count 3:

NOT GUILTY

✓  
GUILTY

**APPENDIX C**

**(SENTENCING TRANSCRIPTS EXCERPTS)**

1  
2                   IN THE UNITED STATES DISTRICT COURT  
3                   FOR THE EASTERN DISTRICT OF VIRGINIA  
4                   NEWPORT NEWS DIVISION

5                   UNITED STATES OF AMERICA                   )  
6   ) CRIMINAL NO. 4:06cr5  
7                   v.    )  
8   )  
9                   COURTNEY OMAR BOYD,                    )  
10   )  
11   Defendant.   )

12   TRANSCRIPT OF SENTENCING PROCEEDINGS

13   Norfolk, Virginia

14   December 7, 2007

15  
16                   Before:           THE HONORABLE WALTER D. KELLEY, JR.  
17   United States District Judge

18  
19                   Appearances:

20                   UNITED STATES ATTORNEY'S OFFICE  
21                   By:   ERIC M. HURT, ESQUIRE  
22   BLAIR C. PEREZ, ESQUIRE  
23   Assistant United States Attorneys

24                   LAW OFFICES OF SAMUEL J. RABIN, JR.  
25                   By:   SAMUEL J. RABIN, JR., ESQUIRE  
   and  
   PROTOGYROU & RIGNEY  
                         By:   ANDREW A. PROTOGYROU, ESQUIRE  
   Counsel for the Defendant Boyd

**COPY**

1 what do they mean. For level 38 of the Sentencing  
2 Guidelines, which is the highest drug level, there must be at  
3 least 150 kilograms of powder cocaine. And so we know that  
4 if the evidence establishes 150 kilos, everything else above  
5 that is interesting but not necessarily relevant to what  
6 sentencing guideline number is going to be used as a base  
7 offense level.

8 So when we look at the evidence, just as an initial  
9 matter -- my recollection might be faulty, but I don't recall  
10 there was any evidence presented to the jury about when and  
11 where Mr. Boyd traveled. There was no evidence, really, at  
12 all about where he went. Certainly there was no evidence  
13 submitted to the jury, that I recall, that he was on federal  
14 probation and therefore not able to go to Miami. In fact, I  
15 would invite the Court's attention to paragraph 48, which is  
16 on page 14, which indicates that the defendant's supervised  
17 release was begun on November 17th, 1995 and expired on  
18 November 16th, 1998.

19 **YES** And then, if we look back to paragraph 28, Raymond  
20 Edwards says in late 1998 Courtney Boyd delivered his first  
21 load to Rohan Green's house. Now, I guess we can assume that  
22 in fabricating all of his testimony, if you take the  
23 defense's position, Raymond Edwards also realized when  
24 Courtney Boyd got off of supervised release so he could  
25 tailor his statements accordingly. Obviously, Judge, and

1                   MR. HURT: Well in excess of 150. So our arguments,  
2 while interesting for purposes of establishing things that we  
3 both feel strongly about, really don't have any impact on the  
4 sentencing guideline range. Now, they may have an impact on  
5 whether the Court is inclined to go above 360 months or below  
6 360 months, however the Court is inclined to rule, but for  
7 purposes of establishing a base offense level they're just  
8 interesting.

9                   So, finally, Judge, the government's position is no  
10 matter whose testimony you take, we are in excess of 150  
11 *150 grams  
not kilos.* grams. We believe that the evidence in the presentence  
12 report is an accurate reflection, albeit not perfect, but is  
13 what is required by the guidelines in the case law to  
14 establish 811 kilos.

15                  THE COURT: Okay. I think I'm going to overrule the  
16 objection. I think the evidence at trial, when combined with  
17 the evidence here in the PSR, is sufficient to establish 150  
18 kilos or more, which is the threshold here. Whether it's 800  
19 or 600 is really sort of a matter of irrelevancy for purposes  
20 of calculating a guideline range.

21                  All right. Mr. Rabin, I think you also had an  
22 objection as to criminal history. There was a two point  
23 enhancement that was added in based upon the theory that  
24 Mr. Boyd was on supervised release at the time this began.  
25 Mr. Edwards' testimony was that he purchased his first load

1                   THE COURT: Three to five years?

2                   Okay. That's where we begin the next stage of the  
3 hearing, which is consideration of the statutory factors  
4 enumerated in 18 USC Section 3553(a). And, specifically, I'm  
5 charged with making a determination about whether a sentence  
6 within the guidelines would "serve" those factors.

7                   Now, does either side have evidence that they wish  
8 to present in connection with this phase of the hearing?

9                   MR. HURT: The United States does not.

10                  MR. RABIN: We do not either.

11                  THE COURT: It will just be argument then.

12                  Mr. Hurt, I tell you candidly, 30 years for this  
13 seems like a long time to me.

14                  MR. HURT: It is a long time, Judge. Absolutely  
15 it's a long time. And I think it's interesting the United  
16 States, a lot of times we come into court and we are -- the  
17 Court makes statements -- certainly with all due respect to  
18 this court, and I'm not suggesting this court has done that,  
19 but I think there is a general view a lot of times from the  
20 bench that the government brings into court people who, for  
21 lack of a better word, are street dealers. And the penalties  
22 for those street dealers --

23                  THE COURT: I said that. Don't exclude me from  
24 that. That's a fair criticism of me as well. Sometimes it  
25 looks like police court in here.

1 to maintain some degree of proportionality.

2 So it's with a very heavy heart that I'm going to  
3 stay within the guidelines with the 360. I think  
4 fundamentally I just think it's too much, but the Fourth  
5 Circuit has said that I am not to substitute my judgment for  
6 that of the Sentencing Guidelines.

7 Pursuant to the Sentencing Reform Act of 1984, it is  
8 the judgment of the Court that the defendant, Courtney O.  
9 Boyd, is hereby committed to the custody of the United States  
10 Bureau of Prisons to be imprisoned for a term of 360 months.

11 The term consists of 360 months on count 2, and a  
12 term of 240 months on count 3, all to be served concurrently.

13 The defendant is remanded to the custody of the  
14 United States Marshal.

15 Upon release from imprisonment, the defendant shall  
16 be placed on supervised release for a term of five years.  
17 This term consists of five years on count 2 and a term of  
18 three years on count 3, all to run concurrently.

19 Within 72 hours of release from custody from the  
20 Bureau of Prisons, the defendant shall report in person to  
21 the probation office in the district to which the defendant  
22 is released.

23 The defendant shall refrain from any unlawful use of  
24 a controlled substance, and submit to one drug test within 15  
25 days of release on supervised release, and at least two

1           All criminal monetary penalty payments are to be  
2 made to the Clerk, United States District Court, except for  
3 the payments made through the Bureau of Prisons Inmate  
4 Financial Responsibility Program.

5           The defendant shall notify the United States  
6 Attorney for this district within 30 days of any change of  
7 name, residence, or mailing address until the special  
8 assessments imposed by this judgment are fully paid.

9           All right. Now, Mr. Boyd, you have the right to  
10 appeal the sentence that the Court has imposed. This is a  
11 right you have in addition to the right to appeal your  
12 conviction. And you need to talk to Mr. Rabin about how to  
13 do that and whether it's a wise thing to do.

14           All right. Now, I think we still have outstanding  
15 something in the forfeiture world here. I see Ms. Perez at  
16 counsel table, so, Ms. Perez, tell me what we've got here  
17 that we need to deal with.

18           MS. PEREZ: Your Honor, the government filed a  
19 motion for a preliminary order of forfeiture, so before  
20 conclusion of the sentencing hearing the Court will have to  
21 decide, pursuant to Rule 32.2(b), the issue of forfeiture.

22           The motion in the proposed order cites as a basis of  
23 forfeiture Title 21 USC Section 853 -- that's forfeiture  
24 based on the drug trafficking conviction -- as well as Title  
25 18 USC 982 Section 982, which flows from the conviction on