

APPENDICES

APPENDIX A

(COURT OF APPEALS OPINION)

UNPUBLISHED

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

No. 19-6872

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

COURTNEY OMAR BOYD, a/k/a Omar,

Defendant - Appellant.

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)

Submitted: August 20, 2019

Decided: August 23, 2019

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

Affirmed by unpublished per curiam opinion.

Courtney Omar Boyd, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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
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UNITED STATES OF AMERICA :

v. :

COURTNEY OMAR BOYD, :

Defendant. :

CRIMINAL ACTION NO. 4:06CR5

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)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

UNITED STATES OF AMERICA)
)
v.) CRIMINAL NO. 4:06cr5
)
COURTNEY OMAR BOYD,)
)
Defendant.)

TRANSCRIPT OF SENTENCING PROCEEDINGS

Norfolk, Virginia

December 7, 2007

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

Appearances:

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

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

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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 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 ⁴the 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

*every had to
determine
all this
bottom line*

*150 grams
not kilo?*

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 ② 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