

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-13991
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEBRUARY 12, 2009 THOMAS K. KAHN CLERK
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D. C. Docket No. 98-00166-CR-J-33TEM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STACY POWELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(February 12, 2009)

Before BIRCH, CARNES and HULL, Circuit Judges.

PER CURIAM:

Stacy Powell appeals his resentencing under 18 U.S.C. § 3582(c)(2).

Although the district court reduced Powell's sentence for his crack cocaine conviction under Amendment 706 of the sentencing guidelines, it denied Powell's request to reduce his sentence further under United States v. Booker, 543 U.S. 220, 125 S. Ct. 738 (2005). Powell contends that the district court erred in failing to apply Booker at his resentencing.

Recently this circuit joined the Eighth, Fourth, and Tenth Circuits in holding that Booker does not apply at resentencing proceedings under § 3582(c)(2). United States v. Melvin, ___ F.3d ___, No. 08-13497 (Feb. 3, 2009); see also United States v. Starks, ___ F.3d ___, No. 08-2590, 2009 WL 66115 (8th Cir. Jan. 13, 2009); United States v. Dunphy, ___ F.3d ___, No. 08-6919, 2009 WL 19139 (4th Cir. Jan. 5, 2009); United States v. Rhodes, 549 F.3d 833 (10th Cir. 2008). There was no error at the resentencing.

AFFIRMED.