

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLIFTON WRIGHT,

Defendant.

ORDER

05-C-0330-C

03-CR-0084-C-01

Defendant Clifton Wright has filed a motion pursuant to 28 U.S.C. § 2255, challenging his conviction on two counts of possession with intent to distribute cocaine base. Defendant contends that his right to due process was violated because the indictment failed to allege a sufficient nexus to interstate commerce; the district court lacked jurisdiction to impose a sentence upon him because the indictment was null and void; he was sentenced unconstitutionally because the court relied on facts not found by a jury to enhance his sentence; and his counsel was ineffective because he failed to object to the magistrate judge's report and recommendation. The motion will be denied.

The indictment returned against defendant was not a violation of his due process

rights. Defendant was prosecuted under the Controlled Substances Act, which Congress enacted pursuant to its commerce clause authority. In enacting the law, Congress made specific findings that are codified in 18 U.S.C. § 801 to the effect that narcotic activity substantially affects interstate commerce. Because those findings are embodied in the law, the government may prosecute individuals under the Controlled Substances Act without having to show that the conduct in any individual case affected interstate commerce. United States v. Peterson, 236 F.3d 848, 855 (7th Cir. 2001) (citing United States v. Westbrook, 125 F.3d 996, 1009 (7th Cir. 1997)).

The indictment returned against defendant was not null and void; therefore, the court did not lack jurisdiction to sentence defendant.

In contending that his sentence was illegal, defendant is relying on the Supreme Court's decisions in Blakely v. Washington, 124 S. Ct. 2531 (2004), and United States v. Booker, 125 S. Ct. 738 (2005), the cases in which the Court held that courts may not sentence under a mandatory sentencing scheme on the basis of facts not found by a jury beyond a reasonable doubt. Neither case applies to defendant's case, however. Blakely did not apply to federal sentences and his appeal became final before the Court decided in Booker that the principle in Blakely applied in federal cases. In McReynolds v. United States, 397 F.3d 479 (7th Cir. 2005), the Court of Appeals for the Seventh Circuit held that Booker did not have retroactive application.

Finally, defendant cannot pursue his contention that his court-appointed counsel was constitutionally ineffective for his failure to object to the magistrate judge's report and recommendation because the court of appeals has held that defendant was responsible for counsel's failure to file objections. That holding is the law of the case and cannot be disturbed by this court.

ORDER

IT IS ORDERED that defendant Clifton Wright's motion for post-conviction relief, filed pursuant to 28 U.S.C. § 2255 is DENIED for defendant's failure to show that his conviction and sentence are illegal in any respect.

Entered this 9th day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge