

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

STEVEN SANTANA,

Petitioner,

v.

ORDER
05-C-152-S
02-CR-48-S-03

UNITED STATES OF AMERICA,

Respondent.

Petitioner Steven Santana moves to vacate his sentence pursuant to 28 U.S.C. §2255. Respondent responded on April 8, 2005. Petitioner's reply was to be filed not later than May 11, 2005 and has not been filed to date.

FACTS

On April 26, 2002 a federal grand jury returned an indictment against petitioner charging him with three counts of selling, distributing or dispensing 3, 4-Methylenedioxyamphetamine (MDMA) in violation of 21 U.S.C. § 841(a). A superseding indictment was returned on June 5, 2002 charging petitioner with one count of conspiracy to distribute MDMA. On September 25, 2002 petitioner pled guilty to the conspiracy charge pursuant to a written plea agreement. On December 4, 2002 petitioner was

sentenced to 108 months in prison. The judgment of conviction and sentence was docketed on December 5, 2002.

Petitioner filed a notice of appeal on March 31, 2003. On June 26, 2003 the United States Court of Appeals for the Seventh Circuit dismissed his appeal for lack of jurisdiction.

Petitioner filed this 28 U.S.C. § 2255 motion on March 10, 2005.

MEMORANDUM

Petitioner claims that he should be resentenced pursuant to the United States Supreme Court decisions in Blakely v. Washington, 124 S.Ct. 2531 (2004) and United States v. Booker, 125 S.Ct. 738(2004). On January 12, 2005 the Supreme Court applying its reasoning in Blakely to the federal sentencing guidelines ruled in Booker that the mandatory nature of the guidelines when combined with judicial fact-finding violated the Sixth Amendment. The Court made the guidelines advisory.

This decision does not apply retroactively to criminal cases that became final before its release on January 12, 2005. See McReynolds, et al v. United States, 397 F.3d 479 (7th Cir. 2005). Accordingly, Booker does not apply to petitioner's case and his 28 U.S.C. § 2255 motion will be denied.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already

provided to undermine this Court's conclusion that his motion must be denied. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's motion under 28 U.S.C. § 2255 is DENIED.

Entered this 17th day of March, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge