

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-3147

September Term, 2002

(No. 01-CR-112-ALL)

United States of America, Appellee

Filed On: December 27, 2002 [722319]

v.

David Flowers, Appellant

Appeal from the United States District Court for the District of Columbia

Before: GINSBURG, *Chief Judge*, and SENTELLE and TATEL, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs of the parties. It is

ORDERED AND ADJUDGED that the appellant's conviction and sentence be affirmed. The Government presented sufficient evidence that "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). We reject appellant's argument that we should extend the holding of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to include prior convictions. The Supreme Court expressly refused to do just that in *Apprendi* itself. *See id.* at 490 ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt"). Appellant's final argument – that the sentence enhancement for obstruction of justice was improperly applied – is irrelevant because his sentencing as a career criminal was not affected by any enhancement.

We remand this case to the district court to change page 2 of the Judgment and Commitment Order to "235 months" from "235 years."

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

By:

Dorothy E. Barrack

Deputy Clerk