

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 01-3122 & 01-3124

September Term, 2002

Filed On: March 26, 2003 [740178]

United States of America, Appellee

v.

Charles Shark, Appellant

Appeals from the United States District Court for the District of Columbia
(92cr00405-05)

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

J U D G M E N T

This cause was considered on the record from the United States District Court and on the briefs and arguments of the parties. It is

ORDERED AND ADJUDGED that the judgment and the resentencing order of the district court be affirmed for the reasons stated therein. Shark's argument against counting his prior conviction for attempted robbery toward his career offender status amounts to an improper collateral attack upon that conviction. The district court properly considered Shark's conviction for drug distribution in determining his career offender status pursuant to U.S.S.G. § 4B1.1 because the lack of a finding concerning the weight of the drugs does not affect the conviction for distribution for sentencing purposes and the grouping provisions of U.S.S.G. § 3D1.2 do not preclude the use of the distribution conviction. As the district court explained, Shark failed to carry his burden of proof regarding his claims of prosecutorial misconduct and of ineffective assistance of counsel at the trial and appellate levels.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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 resolution of any timely petition for rehearing or petition for 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:

Michael C. McGrail

Deputy Clerk