

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-3083

September Term, 2006

FILED ON: FEBRUARY 27, 2007

[1025119]

UNITED STATES OF AMERICA,
APPELLEE

v.

STEVEN JAMES,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 03cr00325-01)

Before: TATEL and GARLAND, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

J U D G M E N T

This appeal from a judgment of the United States District Court for the District of Columbia was presented to the court, and briefed and argued by counsel. The court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. Rule 36(b). It is

ORDERED and **ADJUDGED** that the judgment of the district court be affirmed.

Defendant Steven James pled guilty to unlawful possession with intent to distribute heroin and possession of a firearm during a drug trafficking offense. The district court sentenced him to 262 months' imprisonment.

The central premise of James' appeal is that he was convicted of a drug crime "for which he has never been charged." Appellant's Br. 1. We affirm the conviction because that characterization of the proceedings below is clearly wrong. James was indicted for violating 21 U.S.C. § 841(b)(1)(C), which prohibits possession with intent to distribute any amount of heroin. The sentencing hearing, the presentencing report, and the bulk of the Rule 11 colloquy all correctly referred to and applied that provision. Moreover, the judgment entered in the district court docket plainly states that James was convicted of a violation of subsection 841(b)(1)(C).

It is true that the plea agreement that James negotiated with the government mistakenly identified the drug charge as a violation of subsection 841(b)(1)(B)(i), which covers possession with intent to distribute at least one hundred grams of heroin. It is also true that the district court's Rule 11 colloquy, while otherwise entirely proper, erroneously repeated the statutory sentencing range associated with that more serious offense -- five to forty years instead of zero to twenty years. But neither of those errors alters the fact that James was charged with, pled to, was convicted of, and was sentenced based on a violation of subsection 841(b)(1)(C) -- as reflected in the indictment, the plea transcript, the judgment of conviction, and the sentence imposed.

In addition to his primary claim, James also asserts that the government breached the plea agreement by failing to charge him with a violation of subsection 841(b)(1)(B)(i) and that the district court's plea colloquy violated Rule 11 of the Federal Rules of Criminal Procedure. As James concedes, we may review these claims only for plain error because he failed to raise them before the district court. We conclude that James cannot satisfy his burden under the plain error standard because he cannot show any prejudice from the claimed errors. He does not and could not explain how he was harmed by the government's failure to charge him with a crime carrying a *longer* sentence. And he concedes that neither of the claimed errors had any effect on his decision to plead guilty. *See* Oral Arg. Tape 1:30.

The Clerk is directed to withhold the issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Michael C. McGrail
Deputy Clerk