

JUN 02 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KELVIN OWENS,

Defendant - Appellant.

No. 09-50236

D.C. No. 5:08-cr-00113-SGL-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen G. Larson, District Judge, Presiding

Argued and Submitted March 8, 2011
Pasadena, California

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

Kelvin Owens appeals the ten-year mandatory minimum sentence imposed under 21 U.S.C. § 846 and 18 U.S.C. § 922(g)(9) following his guilty plea to conspiracy to distribute and to possess with intent to distribute fifty grams or more

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

of crack cocaine and 500 grams or more of powder cocaine, and possession of a firearm following a misdemeanor conviction for domestic violence.

While this appeal was pending, President Obama signed into law the Fair Sentencing Act, which increased the quantity of crack cocaine required to trigger mandatory sentences under § 841(b)(1). *See* Pub. L. No. 111-220, 124 Stat. 2372. Owens asks that we vacate his sentence with instructions for resentencing pursuant to the Act, under which he would qualify for a lower, five-year sentence.

We reject his arguments for the reasons set forth in the opinion that we issue today in *United States v. Baptist*, 09-50315.

AFFIRMED.