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USA v. Pinkston

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-4783

UNITED STATES OF AMERICA

v.

KENYATTA PINKSTON, a/k/a Yatta
Appellant
(D.C. Crim. No. 03-cr-00342-2)

No. 03-4784

UNITED STATES OF AMERICA

v.

MAWULDA PINKSTON, a/k/a Sin,
Appellant
(D.C. Crim. No. 03-cr-00342-1)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
District Judge: The Honorable Garrett E. Brown, Jr.

Argued: February 7, 2005

Before: BARRY, FUENTES, and BECKER, Circuit Judges

(Opinion Filed: March 9, 2005)

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OPINION

BARRY, Circuit Judge

Mawulda Pinkston and Kenyatta Pinkston appeal from judgments of conviction and sentence imposed following an eight-day bench trial before the U.S. District Court for the District of New Jersey. In broad summary, the Pinkstons were convicted of one

count of conspiracy to distribute and possess with intent to distribute more than fifty grams of crack cocaine and seven counts of distribution and possession with intent to distribute either cocaine or crack cocaine, all in connection with the drug distribution business they operated in Trenton, New Jersey. Mawulda Pinkston was sentenced to 210 months incarceration and Kenyatta Pinkston was sentenced to 235 months incarceration.

The government accurately and fairly succinctly described what we have before us on these appeals.

“[Appellants’] brief contains fourteen points, many of which, in turn, contain a multitude of undeveloped subclaims and allegations arising from inferences drawn in [appellants’] favor. Several of the points raised do not contain a clear statement of [appellants’] appellate contentions, reasons supporting those contentions, citations to authorities, or citations to the record below to demonstrate that [appellants] had raised the issue in the District Court in the first instance. Indeed, several Argument Points in [appellants’] brief contain only two sentences and a citation to the arguments [appellants] raised below.

Appellee’s Br. at 20-21.

We have, nonetheless, carefully considered each of the numerous contentions raised by appellants and we have heard extensive oral argument on these appeals. We are convinced that these contentions are without merit and, therefore, that the judgments of conviction should be affirmed.

Because, however, appellants at least arguably raise a challenge to their sentences under United States v. Booker, ___ U.S. ___, 125 S.Ct. 738 (2005), and because we have determined that any such issues are best determined by the District Court in the first

instance, we will vacate the sentences and remand for resentencing in accordance with Booker.

The judgments of conviction will be affirmed, the sentences will be vacated, and this matter will be remanded to the District Court for resentencing.