

# United States Court of Appeals

**For the Seventh Circuit  
Chicago, Illinois 60604**

Submitted November 10, 2005\*  
Decided November 21, 2005

## **Before**

Hon. THOMAS E. FAIRCHILD, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 05-2360

XAVIER McCLINTON  
*Petitioner-Appellant,*

v.

UNITED STATES OF AMERICA,  
*Respondent-Appellee.*

Appeal from the United States  
District Court for the Western District  
of Wisconsin

No. 05-C-49-C

Barbara B. Crabb,  
*Chief Judge.*

## **O R D E R**

In 1996 a jury found Xavier McClinton guilty of conspiracy to distribute cocaine, 21 U.S.C. §§ 841(a)(1), 846, and the district court sentenced him to 188 months in prison after finding by a preponderance of the evidence several facts that increased his sentencing guideline range. In this action under 28 U.S.C. § 2255, McClinton seeks to have his sentence vacated in light of *United States v. Booker*, 125 S. Ct. 738 (2005). McClinton acknowledges that we have already decided that *Booker* does not apply retroactively in collateral proceedings, *McReynolds v. United States*, 397 F.3d 479 (7th Cir. 2005). That case addresses the arguments he now presents, and we see no need to revisit it.

AFFIRMED.

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\* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).