

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-1408

United States of America,

Appellee,

v.

Talisha Lynn Kelly,

Appellant.

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Appeal from the United States
District Court for the
District of Minnesota.

[UNPUBLISHED]

Submitted: November 7, 2003

Filed: November 19, 2003

Before BYE, BOWMAN, and MELLOY, Circuit Judges.

PER CURIAM.

After Talisha Kelly pleaded guilty to conspiring to distribute and possess with intent to distribute in excess of 500 grams of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), and 846 (2000), the District Court¹ sentenced her to sixty months of imprisonment and four years of supervised release. She appeals, and we affirm.

¹The Honorable James M. Rosenbaum, Chief Judge, United States District Court for the District of Minnesota.

Kelly seeks resentencing, arguing that the District Court erred in not granting her relief from the mandatory statutory minimum, pursuant to U.S.S.G. §§ 2D1.1(b)(6) and 5C1.2 (2002). Kelly points to the plea agreement, in which the parties stated that they believed Kelly had a Category I criminal history, and in which they agreed that she would receive an additional two-level reduction in her offense level if she was entitled to safety-valve relief. At sentencing, however, Kelly did not dispute the fact that she had two criminal history points, which precluded safety-valve relief. See id. § 5C1.2(a)(1). The mistaken assumption that Kelly had about her own criminal history and resulting sentence was not a basis for the court to grant safety-valve relief.

The judgment is affirmed.
