

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 96-4276

United States of America, *
 *
 Appellee, *
 *
Appeal from the United States *
 v. *
District Court for the *
 *
Western District of Missouri. *
Anthony W. Call, *
 * (UNPUBLISHED)
 Appellant. *

Submitted: May 29, 1997
 Filed: June 2, 1997

Before BOWMAN, WOLLMAN, and BEAM, Circuit Judges.

PER CURIAM.

Anthony W. Call was convicted of possessing with intent to distribute crack and powder cocaine, see 21 U.S.C. § 841(a)(1), (b)(1)(A)(iii), and (b)(1)(C) (1988), and using a firearm during and in relation to a drug-trafficking offense, see 18 U.S.C. § 924(c)(1) (1988). The District Court¹ sentenced Call to concurrent 190-month terms on the drug counts and a consecutive 60-month term

¹The Honorable D. Brook Bartlett, Chief Judge, United States District Court for the Western District of Missouri.

on the firearm count. After the Supreme Court decided Bailey v. United States, 116 S. Ct. 501, 506 (1995) (defining

"use" under § 924(c)(1)), Call filed a 28 U.S.C. § 2255 motion attacking his firearm conviction. The government conceded Call's firearm conviction should be vacated in light of Bailey, but argued the District Court should enhance Call's drug sentences under U.S. Sentencing Guidelines Manual § 2D1.1(b)(1) (1987) for his possession of a firearm. The District Court vacated Call's firearm conviction, assessed the firearm-possession enhancement, and resentenced Call to concurrent 210-month terms on the drug counts.

On appeal, Call argues that the District Court lacked jurisdiction to resentence him on the unchallenged drug convictions, and that application of the firearm-possession enhancement violates double jeopardy and due process. We conclude, however, that Call's arguments are foreclosed by United States v. Harrison, No. 96-2544, slip op. at 3-6 (8th Cir. May 9, 1997) (rejecting same arguments).

Accordingly, the judgment of the District Court is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH
CIRCUIT.