

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

February 19, 2009

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GARY W. FLANDERS,

Defendant - Appellant.

No. 08-6056

(W.D. Oklahoma)

(D.C. No. 5:03-cr-00243-F-1)

ORDER AND JUDGMENT*

Before **HARTZ, McKAY, and O'BRIEN**, Circuit Judges.

Gary Flanders was convicted on two counts of misapplication of bank funds, *see* 18 U.S.C. § 656; two counts of scheming to defraud a bank, *see id.* § 1344(1); making a false entry in bank records, *see id.* § 1005; and conspiracy to make a false statement to a bank, *see id.* § 371. His undisputed sentencing guideline range was 51 to 63 months' imprisonment. The district court varied upward, imposing a 77 months' sentence.

*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Mr. Flanders' sole issue on appeal is that his sentence was substantively unreasonable. We have reviewed his arguments and disagree.

The sentence imposed is AFFIRMED.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge

08-6056 - *United States v. Flanders*

O'BRIEN, J. concurring.

In a series of ceremonial rites the leveling forces of the guidelines, their hearthstone, were sacrificed on the altar of sentencing discretion and appellate courts rendered impotent. *See Spears v. United States*, 129 S. Ct. 840 (2009); *Gall v. United States*, 128 S. Ct. 586 (2007); *Kimbrough v. United States*, 128 S. Ct. 558 (2007); *United States v. Booker*, 543 U.S. 220 (2005).