

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-2957

Carlos Gutierrez,	*	
	*	
Petitioner - Appellant,	*	
	*	Appeal from the United States
v.	*	District Court for the District
	*	of Minnesota.
United States of America,	*	
	*	[UNPUBLISHED]
Respondent - Appellee.	*	

Submitted: April 18, 2006
Filed: April 24, 2006

Before MURPHY, MELLOY, and GRUENDER, Circuit Judges.

PER CURIAM.

Carlos Gutierrez was convicted after a jury trial of four drug offenses and was sentenced to 360 months. His convictions and sentence were affirmed on direct appeal. See United States v. Gutierrez, 367 F.3d 733 (8th Cir. 2004). Subsequent to his sentencing the United States Supreme Court decided Blakely v. Washington, 542 U.S. 296 (2004), and United States v. Booker, 543 U.S. 220 (2005), and by this motion under 28 U.S.C. § 2255 Gutierrez seeks their application to his sentence. The

district court¹ denied relief but granted a certificate of appealability. Since Blakely and Booker do not apply retroactively, Gutierrez is not entitled to the ruling he seeks. See Never Misses a Shot v. United States, 413 F.3d 781 (8th Cir. 2005) (per curiam). Accordingly, we affirm the judgement of the district court. See 8th Cir. R. 47B.

¹The Honorable John R. Tunheim, United States District Judge for the District of Minnesota.