

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-4113

United States of America,

Appellee,

v.

Tong Thanh Robert Nguyen,
also known as Robert Nguyen,

Appellant.

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

[UNPUBLISHED]

Submitted: October 4, 2005

Filed: October 10, 2005

Before ARNOLD, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Tong Thanh Robert Nguyen pleaded guilty to conspiring to distribute and possess with intent to distribute 50 grams or more of cocaine base, in violation of 21 U.S.C. § 846, and the district court* sentenced him to 135 months in prison and 5 years of supervised release. On appeal, Nguyen argues the district court should have departed downward under U.S.S.G. § 4A1.3 because the seriousness of his criminal history was overstated, and he should be resentenced under United States v. Booker,

*The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska.

125 S. Ct. 738 (2005), because the district court treated the Guidelines as mandatory at his pre-Booker sentencing.

As to the first issue, Nguyen cannot challenge his 135-month prison sentence because he specifically agreed to it in his plea agreement. See United States v. Reyes-Contreras, 349 F.3d 524, 525 (8th Cir. 2003) (per curiam); United States v. Nguyen, 46 F.3d 781, 783 (8th Cir. 1995). As to the second issue, Nguyen did not raise a Sixth Amendment objection below, and he cannot demonstrate a reasonable probability the district court would have imposed a lower sentence under advisory Guidelines. See United States v. Pirani, 406 F.3d 543, 552-53 (8th Cir. 2005) (en banc), petition for cert. filed, __ U.S.L.W. __ (U.S. July 27, 2005) (No. 05-5547).

Accordingly, we affirm the judgment of the district court.
