

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-3977

UNITED STATES OF AMERICA

v.

VICTOR ROSARIO-MOYA,
Appellant

On Appeal from the District
Court of the Virgin Islands
(Division of St. Thomas and St. John)
(D.C. Criminal No. 01-cr-00042-1)
District Judge: Honorable Thomas K. Moore

Argued May 14, 2002

Before: AMBRO, FUENTES and GARTH, Circuit Judges

(Filed: June 14, 2002)

Thurston T. McKelvin
Federal Public Defender

DOUGLAS J. BEE
Office of the

P.O. Box 1327, 51B Kongens Gade

Charlotte Amalie, St. Thomas

David L. Atkinson
United States Attorney
KIM L. CHISHOLM, ESQUIRE (Argued)

U.S. Attorney's Office
5500 Veterans Building, Suite 26
Charlotte Amalie, St. Thomas

Transcribed by: Geraldine C. Laws, CET

(Proceedings recorded by electronic sound recording;
transcript prepared by AAERT-certified transcriber.)

(The following bench opinion was delivered in open court:)

BENCH OPINION

AMBRO: Circuit Judge.

(The following is the bench opinion of the Court in the above-captioned matter:)

THE HONORABLE JUDGE AMBRO: At the outset I would like to thank you for ordering the transcript, albeit I realize that it is due on Thursday. But the oral argument this morning was particularly helpful for us in ferreting out the facts relating to the 1986 conviction. And as I noted to Mr. Beevers, if the 1986 conviction is a felony punishable under the Controlled Substances Act or would be a felony punishable under the Controlled Substances Act, that pretty much does it in terms of this particular case.

Paragraph 24 of the presentence report, which as noted during oral argument was not objected to, states that the defendant was represented by counsel. On June 24, 1986, undercover officers met the defendant at an agreed-upon room in the Bronx. The defendant handed the officers three vials of crack and they paid him \$10 in prerecorded buy money. The officers then radioed for a backup team. Pursuant to a search warrant, officers of the SACU Narcotics Division arrived at the scene and arrested the defendant. The police laboratory report indicated that the three vials contained 8.2 grams of cocaine.

The defendant subsequently admitted to selling crack to support his own drug addiction. That was not objected to and it is in that context that the prerequisites are met for the enhancement of sentencing in this case. Therefore the judgment of sentence is hereby affirmed.

TO THE CLERK:

Please file the foregoing Bench Opinion.

By the Court,

/s/ Thomas L. Ambro
Circuit Judge