

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 04-1688 and 05-5164

UNITED STATES OF AMERICA

v.

CORDELL HOWELL
a/k/a Cardell Howell

Cordell Howell,
Appellant

Appeals from the United States District Court
for the Western District of Pennsylvania
(D.C. Criminal No. 03-cr-00003)
District Judge: Honorable Joy F. Conti

Submitted Under Third Circuit LAR 34.1(a)
January 31, 2008

Before: RENDELL and CHAGARES, Circuit Judges,
and POLLAK, *District Judge.

(Filed: February 7, 2008)

OPINION OF THE COURT

*Honorable Louis H. Pollak, Senior Judge of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

RENDELL, *Circuit Judge*.

Cordell Howell appeals his sentence of 235 months' imprisonment following a plea of guilty to possession with the intent to distribute 5 or more grams of cocaine base ("crack") in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(iii). For the reasons that follow, we will affirm the sentence imposed by the District Court.

The only argument Howell makes is that the District Court erred by increasing defendant's offense level under U.S.S.G. § 3C1.1 for obstruction of justice based on facts proven by a preponderance of the evidence, rather than beyond a reasonable doubt. This argument is foreclosed by this Court's decision in *United States v. Grier*, 475 F.3d 556, 568 (3d Cir. 2007). In *Grier*, this Court held that the proper standard of proof for facts relevant to enhancements under the advisory Guidelines regime was a preponderance of the evidence. *Id.* Therefore, Howell's argument fails.

We will affirm the sentence imposed in the Judgment and Commitment Order of the District Court.