

MAR 11 2008

MOLLY DWYER, ACTING CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>BETTY LOU LEWIS,</p> <p>Defendant - Appellant.</p>
---

No. 04-17316

D.C. Nos. CV-04-06399-REC  
CR-97-05266-REC

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Robert E. Coyle, Senior District Judge, Presiding

Submitted February 26, 2008\*\*

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Betty Lou Lewis appeals from the district court’s judgment denying her 28 U.S.C. § 2255 motion. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lewis contends that the district court's failure to submit the issue of drug quantity to the jury for its determination by proof beyond a reasonable doubt deprived her of her Sixth Amendment right to trial by jury, in violation of *Blakely v. Washington*, 542 U.S. 296 (2004). Lewis also contends that the district court violated her Sixth Amendment right of confrontation by admitting, over her objection, a newspaper article from the *Modesto Bee*, in violation of *Crawford v. Washington*, 541 U.S. 36 (2004).

Lewis' *Blakely* claim is foreclosed by *United States v. Cruz*, 423 F.3d 1119, 1121 (9th Cir. 2005) (holding that neither *Blakely* nor *United States v. Booker*, 543 U.S. 220 (2005), applies retroactively to cases on collateral review). Likewise, Lewis' confrontation argument is foreclosed by *Whorton v. Bockting*, 127 S. Ct. 1173, 1184 (2007) (holding that *Crawford* has no application to cases on collateral review).

We also conclude that the district court correctly determined that there was no *Apprendi* violation as the sentence did not exceed the statutory maximum. *See Apprendi v. New Jersey*, 530 U.S. 466, 489 (2000); *see also* 21 U.S.C. § 841(b)(1)(c).

Lewis' motion requesting that her appeal of the denial of her § 2255 motion petition be heard and determined, filed on April 26, 2007, is denied as moot.

**AFFIRMED.**