

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 02-3097**

**September Term, 2002**

Filed On: May 22, 2003 [750632]

United States of America,  
Appellee

v.

David Gray, *a/k/a* Dinky,  
Appellant

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Appeal from the United States District Court  
for the District of Columbia  
(No. 01cr00180-06)

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Before: GINSBURG, *Chief Judge*, and ROGERS and TATEL, *Circuit Judges*.

## **J U D G M E N T**

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and arguments of the parties. It is

ORDERED AND ADJUDGED that appellant's sentence be affirmed. Assuming appellant had a Fifth Amendment privilege that would have prohibited the district court from considering his silence at sentencing in determining whether he had any remorse, appellant failed to articulate a basis for asserting the privilege. *See Roberts v. United States*, 445 U.S. 552, 559-60 (1980).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.*

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY:

Deputy Clerk