

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DARRYL LEON BAILEY,
Defendant-Appellant.

No. 00-4919

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
William L. Osteen, District Judge.
(CR-00-151)

Submitted: April 12, 2001

Decided: April 20, 2001

Before NIEMEYER, WILLIAMS, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Louis C. Allen, III, Federal Public Defender, William C. Ingram, First Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Walter C. Holton, Jr., United States Attorney, Lisa B. Boggs, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Darryl Leon Bailey was convicted of one count of bank robbery, one count of armed bank robbery and one count of aiding and abetting the carrying and using a firearm during a crime of violence in violation of 18 U.S.C.A. §§ 2 & 924(c)(1)(A)(iii) (West 2000). With regard to the firearm conviction, the district court found at sentencing that the firearm was discharged. Accordingly, the court sentenced Bailey to 10 years' imprisonment for that conviction, the statutory minimum. *See* 18 U.S.C.A. § 924(c)(1)(A)(iii). On appeal, Bailey contends that "brandished" and "discharged" as found in 18 U.S.C.A. § 924(c) are elements of separate offenses and not merely sentencing factors. Because these elements were not found by the jury beyond a reasonable doubt, Bailey argues that he should have been sentenced to the statutory minimum term of 5 years' imprisonment as authorized under 18 U.S.C. § 924(c)(1)(A)(i). We affirm the conviction and sentence.

This court recently rejected Bailey's argument and held that the "brandished" clause under 18 U.S.C. § 924(c)(1)(A)(ii) was a sentencing factor. *See United States v. Harris*, ___ F.3d ___, 2001 WL 273146 (4th Cir. Mar. 20, 2001). This holding applies to the "discharged" clause found under 18 U.S.C. § 924(c)(1)(A)(iii).

Accordingly, we affirm Bailey's convictions and sentences. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED