

UNPUBLISHED

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

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

BOBBY SHERRILL MCKEITHAN,  
*Defendant-Appellant.*

No. 01-4443

Appeal from the United States District Court  
for the Eastern District of North Carolina, at Raleigh.  
W. Earl Britt, Senior District Judge.  
(CR-00-141)

Submitted: November 15, 2001

Decided: December 13, 2001

Before NIEMEYER, KING, and GREGORY, Circuit Judges.

---

Affirmed by unpublished per curiam opinion.

---

**COUNSEL**

Thomas P. McNamara, Federal Public Defender, G. Alan DuBois, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. John Stuart Bruce, United States Attorney, Anne M. Hayes, Assistant United States Attorney, J. Frank Bradsher, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.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

---

### OPINION

PER CURIAM:

Bobby Sherrill McKeithan pled guilty to a criminal information charging him with possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C.A. § 922(g) (West 2000). The district court determined that McKeithan was an armed career criminal, pursuant to 18 U.S.C.A. § 924(e) (West 2000), and sentenced him to a 180-month term of imprisonment. McKeithan appeals his sentence.

McKeithan contends that his sentence as an armed career criminal under § 924(e) is unconstitutional under the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). We conclude, however, that *Apprendi* does not apply to McKeithan's enhanced sentence under § 924(e) because it is based on his prior convictions, a factor that was specifically excluded from the holding of *Apprendi*. Contrary to McKeithan's assertions, *Apprendi* expressly declined to revisit the holding of *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998), that prior felony convictions are merely sentencing enhancements, rather than elements of the offense. *Apprendi*, 530 U.S. at 488-90; *see also United States v. Skidmore*, 254 F.3d 635, 642 (7th Cir. 2001) (holding that *Apprendi* does not affect enhanced sentence under § 924(e)); *United States v. Thomas*, 242 F.3d 1028, 1035 (11th Cir.) (same), *cert. denied*, 121 S. Ct. 2616 (2001); *United States v. Dorris*, 236 F.3d 582, 586-88 (10th Cir. 2000) (same), *cert. denied*, 121 S. Ct. 1635 (2001); *United States v. Mack*, 229 F.3d 226, 235 n.12 (3d Cir. 2000) (same), *cert. denied*, 121 S. Ct. 2015 (2001).

We therefore affirm McKeithan's conviction and sentence. 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*