

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

THOMAS HENRY BROADNAX,
Defendant-Appellant.

No. 03-4108

Appeal from the United States District Court
for the Middle District of North Carolina, at Greensboro.
Frank W. Bullock, Jr., District Judge.
(CR-02-291)

Submitted: April 24, 2003

Decided: May 5, 2003

Before NIEMEYER, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Louis C. Allen III, Federal Public Defender, William C. Ingram, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Michael A. DeFranco, 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Unpublished opinions are not binding precedent in this circuit.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:

Thomas Henry Broadnax pled guilty to two counts of bank robbery, in violation of 18 U.S.C. §§ 2113 (a), (d) (2000). On appeal, he contests his 90-month sentence arguing that the district court erred by enhancing his base offense level by three levels for brandishing or possessing a dangerous weapon during the robbery when that fact was not alleged in the indictment. *See U.S. Sentencing Guidelines Manual* § 2B3.1(b)(2)(E) (2002). We affirm.

Broadnax contends that under *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), facts that increase the sentencing guideline range must be charged in the indictment and proved beyond a reasonable doubt. He concedes, however, that *Apprendi* is not implicated when the sentencing court makes factual findings that increase the sentencing guidelines range but the sentence does not exceed the statutory maximum. *United States v. Obi*, 239 F.3d 662, 667 (4th Cir.), *cert. denied*, 122 S. Ct. 86 (2001); *United States v. Kinter*, 235 F.3d 192, 201-02 (4th Cir. 2000), *cert. denied*, 532 U.S. 937 (2001); *see also Harris v. United States*, 536 U.S. 545 (2002) (holding that brandishing is sentencing factor for offense under 18 U.S.C. § 924(c)(1)(A) (2000)).

Because Broadnax's sentence does not exceed the statutory maximum, we affirm the sentence imposed by the district court. 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