

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-4699**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JERMAIN TEREL MCNAIR,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at New Bern. Malcolm J. Howard, District Judge. (CR-04-60)

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Submitted: February 28, 2006

Decided: March 15, 2006

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Before WILKINSON and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Thomas P. McNamara, Federal Public Defender, G. Alan DuBois, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. Frank D. Whitney, United States Attorney, Anne M. Hayes, Christine Witcover Dean, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jermain Terel McNair pled guilty to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924 (2000). McNair appeals his 37-month sentence, arguing that the district court erred in denying his motion for a downward departure and that his sentence was excessive and unreasonable when considered in light of all the factors in 18 U.S.C.A. § 3553(a) (West 2000 & Supp. 2005). We affirm McNair's sentence.

After the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005), a sentencing court is no longer bound by the range prescribed by the sentencing guidelines. See United States v. Hughes, 401 F.3d 540, 546 (4th Cir. 2005). However, in determining a sentence post-Booker, sentencing courts are still required to calculate and consider the applicable guideline range as well as the factors set forth in 18 U.S.C.A. § 3553(a). Id. If the sentence imposed is within the properly calculated guideline range, it is presumptively reasonable. United States v. Green, \_\_\_ F.3d \_\_\_, \_\_\_, 2006 WL 267217, at \*5 (4th Cir. Feb. 6, 2006) (No. 05-4270).

McNair's 37-month sentence was both within the guideline range of 37 to 46 months, and well within the statutory maximum of ten years. See 18 U.S.C. § 924(a)(2). We decline to review the district court's decision not to depart from the applicable

guideline range. See United States v. Ruiz, 536 U.S. 622, 626-28 (2002); United States v. Bayerle, 898 F.2d 28, 30 (4th Cir. 1990). Because the district court appropriately treated the guidelines as advisory, properly calculated and considered the guideline range, and weighed the relevant § 3553(a) factors, we find the sentence reasonable.

Accordingly, we affirm McNair's 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