

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-5093

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SAMUEL NEAL HART,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., District Judge. (CR-05-44)

Submitted: May 18, 2006

Decided: May 26, 2006

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

Affirmed by unpublished per curiam opinion.

Thomas N. Cochran, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Douglas Cannon, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Samuel Neal Hart pled guilty to possession of ammunition by a convicted felon, 18 U.S.C. § 922(g)(1) (2000), and was sentenced as an armed career criminal to the mandatory minimum term of 180 months imprisonment pursuant to 18 U.S.C.A. § 924(e) (West 2000 & Supp. 2005). Hart appeals his sentence, contending that, under United States v. Booker, 543 U.S. 220 (2005), and Shepard v. United States, 544 U.S. 13 (2005), the sentence was imposed in violation of the Fifth and Sixth Amendments. We affirm.

Hart's criminal record included felony convictions for multiple incidents of breaking and entering and arson committed in 1997; breaking and entering in 2003; and both kidnaping and assault with a deadly weapon in 2004. Hart does not dispute that he qualified for sentencing as an armed career criminal, but asserts that the sentence is unconstitutional because the indictment did not charge that he had three qualifying prior convictions committed on occasions different from one other, and because the necessary facts were neither proved by the government beyond a reasonable doubt nor admitted by him. Hart acknowledges that his arguments are foreclosed by United States v. Thompson, 421 F.3d 278, 281-83 (4th Cir. 2005) (holding that judicial armed career criminal designation does not violate Fifth or Sixth Amendment under Booker or Shepard if "the facts necessary to support the enhancement

inhere in the fact of [the] conviction[s]"), cert. denied, 126 S. Ct. 1463 (2006).

We therefore conclude that no error occurred and that the sentence was reasonable. 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