

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4235

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JEROME LEMARIO CUNNINGHAM,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Frank W. Bullock, Jr., Senior District Judge. (1:05-cr-00061-FWB)

Submitted: March 14, 2007

Decided: March 26, 2007

Before WILKINSON, WILLIAMS, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

J. Clark Fischer, RANDOLPH & FISCHER, Winston-Salem, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Clifton T. Barrett, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jerome Lemario Cunningham pled guilty, pursuant to a plea agreement, to one count of attempting to take and obtain currency by threatening with a firearm an employee of a convenience store, in violation of 18 U.S.C. §§ 1951 & 2 (2000); one count of carjacking, in violation of 18 U.S.C. §§ 2119 & 2 (2000); and one count of carrying and use of a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(iii) (2000), and was sentenced to concurrent terms of seventy months' imprisonment, followed by a 120 month consecutive sentence. Cunningham now appeals his sentence.

On appeal, Cunningham asserts that the district court engaged in impermissible double counting by adding a two point enhancement under U.S.S.G. § 2B3.1(b)(5) to Cunningham's base offense level because the offense involved carjacking. Whether impermissible double counting occurred is a legal issue that is reviewed de novo. United States v. Rohwedder, 243 F.3d 423, 426-27 (8th Cir. 2001). Double counting is permissible under the sentencing guidelines except where it is expressly prohibited. United States v. Reevey, 364 F.3d 151, 158 (4th Cir. 2004)

In determining the offense level, the district court committed no double counting error by adding two levels pursuant to U.S. Sentencing Guidelines Manual § 2B3.1(b)(5) (2004). See United

States v. Naves, 252 F.3d 1166 (11th Cir. 2001). Cunningham has not otherwise shown that his sentence is unreasonable.

We therefore affirm the judgment of 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