

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4735

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JIMMY JAMES WITHERSPOON,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., Chief District Judge. (1:05-cr-00372-JAB)

Submitted: December 14, 2006

Decided: December 19, 2006

Before MICHAEL, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Louis C. Allen III, Federal Public Defender, William S. Trivette, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Lisa B. Boggs, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jimmy James Witherspoon appeals the 240-month sentence imposed after he was convicted by a jury of one count of possession of a firearm after having been convicted of a crime punishable by more than one year of imprisonment, in violation of 18 U.S.C. § 922(g) (2000). The district court concluded that Witherspoon qualified for sentencing as an armed career criminal pursuant to 18 U.S.C.A. § 924(e) (West 2000 & Supp. 2006).

On appeal, Witherspoon asserts that his sentence was unconstitutionally enhanced based upon facts, his qualifying prior convictions, that were not alleged in the indictment, admitted by him, or found by a jury beyond a reasonable doubt. Witherspoon does not assert that his prior convictions are not valid predicates for sentencing as an armed career criminal, but states only a legal challenge to his sentence. Witherspoon's argument is foreclosed by our decisions in United States v. Thompson, 421 F.3d 278 (4th Cir. 2005), cert. denied, 126 S. Ct. 1463 (2006), and United States v. Cheek, 415 F.3d 349, 352-53 (4th Cir.), cert. denied, 126 S. Ct. 640 (2005).

We therefore affirm Witherspoon'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