

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-5191**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BERNARD EUGENE MITCHELL, JR.,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Senior District Judge. (1:06-cr-00178-WLO)

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Submitted: July 31, 2007

Decided: August 17, 2007

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Before WILKINSON, TRAXLER, and GREGORY, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Thomas N. Cochran, Assistant Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, David P. Folmar, Jr., Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Bernard Eugene Mitchell, Jr., pled guilty pursuant to a plea agreement to one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) (2000). Mitchell was sentenced to fifty-seven months' incarceration. Finding no error, we affirm.

On appeal, Mitchell challenges the presumption of reasonableness this court affords post-Booker\* sentences imposed within a properly calculated guidelines range. The Supreme Court's recent decision in Rita v. United States, 127 S. Ct. 2456 (2007), however, forecloses this argument. See also United States v. Montes-Pineda, 445 F.3d 375, 379 (4th Cir. 2006), cert. denied, \_\_\_ U.S. \_\_\_, 75 U.S.L.W. 3707 (U.S. June 29, 2007) (No. 06-5439); United States v. Johnson, 445 F.3d 339, 341-42 (4th Cir. 2006); United States v. Moreland, 437 F.3d 424, 433 (4th Cir.), cert. denied, 126 S. Ct. 2054 (2006); United States v. Green, 436 F.3d 449, 457 (4th Cir.), cert. denied, 126 S. Ct. 2309 (2006).

Mitchell also contends that his sentence is unreasonable because it is greater than necessary to accomplish the goals of 18 U.S.C. § 3553(a) (West 2000 & Supp. 2006). Because the district court properly calculated and considered the advisory guidelines range and weighed the relevant § 3553(a) factors, we conclude Mitchell's sentence, which was below the statutory maximum and

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\*United States v. Booker, 543 U.S. 220 (2005).

within the advisory guidelines range, is reasonable. See Green, 436 F.3d at 455-56; United States v. Hughes, 401 F.3d 540, 546-47 (4th Cir. 2005).

Accordingly, we 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 in the decisional process.

AFFIRMED