

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-5244

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RAYMOND M. MARKER,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Senior District Judge. (1:04-cr-00010)

Submitted: November 30, 2007

Decided: December 27, 2007

Before MICHAEL, TRAXLER, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Nils E. Gerber, NILS E. GERBER, ATTORNEY AT LAW, Winston-Salem, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, L. Patrick Auld, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Raymond M. Marker appeals from the 108-month sentence imposed after we remanded for resentencing in accordance with United States v. Booker, 543 U.S. 220 (2005), and United States v. Hughes, 401 F.3d 540 (4th Cir. 2005). He contends that his sentence amounts to "cruel and unusual punishment" in violation of the Eighth Amendment, and that the sentence imposed was unreasonable. Finding no error, we affirm.

Marker first argues that the 108-month sentence violates his right to be free from cruel and unusual punishment. However, his Eighth Amendment claim necessarily fails, as proportionality review is unavailable "for any sentence less than life imprisonment without the possibility of parole." United States v. Ming Hong, 242 F.3d 528, 532 (4th Cir. 2001).

Marker also argues that the sentence imposed by the district court was unreasonable in light of his lack of criminal history and his poor health. We find that the district court properly determined the appropriate sentencing range under the guidelines, properly applied the guidelines as advisory and, after considering Marker's arguments and the § 3553(a) factors, imposed a sentence within the guideline range. We find that the 108-month sentence is reasonable. See Rita v. United States, 127 S. Ct. 2456, 2462-69 (2007); United States v. Green, 436 F.3d 449, 457 (4th Cir.), cert. denied, 126 S. Ct. 2309 (2006). Accordingly, we

affirm Marker'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