

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4176

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HAROLD FORD,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge. (7:08-cr-00093-BR-1)

Submitted: September 15, 2011 Decided: September 27, 2011

Before WILKINSON, WYNN, and DIAZ, Circuit Judges.

Reversed and remanded by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, G. Alan DuBois, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. George E. B. Holding, United States Attorney, Jennifer P. May-Parker, Kristine L. Fritz, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Harold Ford was convicted of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), 924 (2006). The district court sentenced Ford to seventy-eight months' imprisonment. Ford appealed, arguing that his prior conviction was not punishable by imprisonment for a term exceeding one year and, thus, could not serve as a predicate conviction pursuant to 18 U.S.C. § 922(g)(1). Ford has moved to vacate his conviction and remand the case to the district court. In light of United States v. Simmons, ___ F.3d ___, No. 08-4475, 2011 WL 3607266 (4th Cir. Aug. 17, 2011) (en banc), we reverse.

Under 18 U.S.C. § 922(g)(1), it is unlawful for any person convicted of a crime punishable by imprisonment for a term exceeding one year to possess a firearm. Ford's prior North Carolina state conviction was not punishable by imprisonment for a term exceeding one year. See N.C. Gen. Stat. § 15A-1340.17(c)-(d) (2009) (setting out minimum and maximum sentences applicable under North Carolina's structured sentencing scheme). When Ford raised this argument in the district court, it was foreclosed by our decision in United States v. Harp, 406 F.3d 242, 246 (4th Cir. 2005). Subsequently, however, we overruled Harp with our en banc decision in Simmons, in which we sustained a similar argument in favor of the defendant. In view of our holding in Simmons, we

reverse Ford's conviction, deny as moot the motion to vacate, and remand the case to the district court for further proceedings.

We direct the clerk to issue the mandate forthwith. 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.

REVERSED AND REMANDED