

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4414

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BOBBY LINDBERG CADDELL,

Defendant - Appellant.

No. 10-4415

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BOBBY LINDBERG CADDELL,

Defendant - Appellant.

Appeals from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:09-cr-00221-NCT-1; 1:09-cr-00224-NCT-1)

Submitted: September 29, 2011

Decided: October 4, 2011

Before KING, GREGORY, and DUNCAN, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Louis C. Allen, Federal Public Defender, William C. Ingram, First Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Michael A. DeFranco, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Bobby Lindberg Caddell appeals the 188-month sentence imposed following his guilty plea to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (2006), and possession of counterfeit Federal Reserve Notes, in violation of 18 U.S.C. § 472 (2006). On appeal, Caddell argues that the district court improperly sentenced him as an armed career criminal because the three prior breaking and entering convictions on which that classification was based were not violent felonies punishable by more than one year of imprisonment under North Carolina law. See 18 U.S.C. § 924(e)(1) (2006); N.C. Gen. Stat. § 15A-1340.17(c)-(d) (2007) (applicable to offenses committed on or before November 30, 2009).^{*} When Caddell raised this argument in the district court, it was foreclosed by our decision in United States v. Harp, 406 F.3d 242 (4th Cir. 2005). Subsequently, however, we overruled Harp with our en banc decision in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). In view of Simmons, we vacate Caddell's sentence and remand the case to the district court for resentencing. We affirm Caddell's conviction.

^{*} The North Carolina legislature subsequently amended the statute with regard to offenses committed on or after December 1, 2009, see Act of Aug. 28, 2009, 2009 N.C. Sess. Laws 555, and offenses committed on or after December 1, 2011. See Justice Reinvestment Act of 2011, 2011 N.C. Sess. Laws 192.

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 IN PART,
VACATED IN PART, AND REMANDED