

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-4327

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTWAIN LAMAR DENNIS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:11-cr-00226-FL-1)

Submitted: October 23, 2012

Decided: December 3, 2012

Before WILKINSON and DIAZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, G. Alan DuBois, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. Thomas G. Walker, 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Unpublished opinions are not binding precedent in this circuit.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:

Antwain Lamar Dennis pled guilty to unlawful possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1) (2006) and was sentenced to eighty-four months of imprisonment. On appeal, Dennis alleges that the district court erred when it imposed an upward departure sentence. For the reasons that follow, we affirm.

As clearly discussed by the district court at the sentencing hearing, it departed upward by three levels under U.S. Sentencing Guidelines Manual ("USSG") § 5K2.6, p.s., because Dennis used the gun at issue to threaten his girlfriend and discharged the gun in a residence where other women and children were present. These facts were extant in Dennis' presentence report; the court found, however, that Dennis' statements to police, that he found the gun in the backyard and that the gun accidentally discharged after he fell over a couch, were simply incredible. See United States v. Terry, 916 F.2d 157, 162 (4th Cir. 1990) ("The burden is on the defendant to show the inaccuracy or unreliability of the presentence report."). We conclude that the district court's factual findings regarding his use of the gun were not procedurally erroneous. Gall v. United States, 552 U.S. 38, 49-51 (2007). Moreover, in light of these factual findings, the district court's upward departure was reasonable under USSG § 5K2.6, p.s.

Accordingly, we affirm. 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