

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 97-4953

ROBERT LEONARD STEELE,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.

Marvin J. Garbis, District Judge.

(CR-97-161-MJG)

Submitted: August 24, 1999

Decided: November 2, 1999

Before WILKINS and TRAXLER, Circuit Judges,
and PHILLIPS, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

James Wyda, Federal Public Defender, Jeffrey E. Risberg, Assistant
Federal Public Defender, Baltimore, Maryland, for Appellant. Lynne
A. Battaglia, United States Attorney, P. Michael Cunningham, Assis-
tant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Robert L. Steele appeals the sentence imposed by the district court following his guilty plea to one count of possession of an unregistered firearm in violation of 26 U.S.C. § 5861(d) (1994). Steele claims that the district court used his 1987 Maryland conviction for common law battery as a predicate offense for application of the heightened sentencing provisions without determining whether the conviction actually stemmed from a crime of violence. See United States Sentencing Guidelines Manual, §§ 2K2.1(a)(2), 4B1.2(1) (1995). Indeed, the probation officer's presentence report discloses none of the factual circumstances of Steele's conviction for battery. Because common law battery in Maryland can include offenses that would not be considered crimes of violence under the federal sentencing guidelines, we vacate Steele's sentence and remand to the district court with instructions to investigate the factual circumstances underlying Steele's 1987 conviction.¹ See United States v. Kirksey, 138 F.3d 120, 125 (4th Cir.), cert. denied, 119 S.Ct. 122 (1998). ² We also grant Steele's motion to submit the case without oral argument because the facts and legal contentions are adequately presented in the materials before the court.

VACATED AND REMANDED

¹ The United States concedes that remand is appropriate.

² We note that because the sentencing hearing preceded Kirksey by four months, the district court did not have the benefit of our decision prior to entering judgment.