

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DONALD RAY FLIPPIN,
Defendant-Appellant.

No. 02-4559

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
James A. Beaty, Jr., District Judge.
(CR-01-345)

Submitted: November 21, 2002

Decided: December 2, 2002

Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Louis C. Allen III, Federal Public Defender, William C. Ingram, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Lisa B. Boggs, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Donald Ray Flippin pled guilty to possessing ammunition after being convicted of a felony offense in violation of 18 U.S.C. § 922(g)(1) (2000). He contests the 87-month sentence imposed by the district court, arguing that the district court erred in two respects: first, by enhancing his base offense level for an offense committed after two felony drug convictions when only one prior conviction was alleged in the indictment and, second, by making a four-level enhancement for possession of a firearm in connection with another offense when that fact also was not alleged in the indictment. *See U.S. Sentencing Guidelines Manual* § 2K2.1(a)(2), (b)(5) (2001). We affirm.

Flippin contends that, under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), facts that increase the sentencing guideline range must be charged in the indictment and proved beyond a reasonable doubt. He concedes that we have held that *Apprendi* is not implicated when the sentencing court makes factual findings that increase the sentencing guideline range but the sentence does not exceed the statutory maximum. *United States v. Obi*, 239 F.3d 662, 667 (4th Cir.), *cert. denied*, 122 S. Ct. 86 (2001); *United States v. Kinter*, 235 F.3d 192, 199 (4th Cir. 2000), *cert. denied*, 523 U.S. 937 (2001).

Because neither of the issues raised by Flippin has merit, we affirm the sentence imposed by the district court. 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