

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL ORLANDO DOWNEY,
Defendant-Appellant.

No. 02-4733

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
Frank W. Bullock, Jr., District Judge.
(CR-02-69)

Submitted: January 30, 2003

Decided: February 6, 2003

Before WIDENER, NIEMEYER, 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Affirmed by unpublished per curiam opinion.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, Randall S. Galyon, 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Unpublished opinions are not binding precedent in this circuit.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:

Michael O. Downey pled guilty to bank robbery in violation of 18 U.S.C. § 2113(a) (2000). He contests the 96-month sentence imposed by the district court, arguing that the district court erred by enhancing his base offense level by three levels for brandishing or possessing a firearm during the offense when that fact was not alleged in the indictment. *See U.S. Sentencing Guidelines Manual* § 2K2.1(b)(4) (2001). We affirm.

Downey contends that, under *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), facts that increase the sentencing guideline range must be charged in the indictment and proved beyond a reasonable doubt. However, *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. *Harris v. United States*, 122 S. Ct. 2406, 2418 (2002). The statutory maximum for Downey's offense is 240 months.

Because the issue raised by Downey lacks 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