

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4401

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER ALLEN PHIPPS,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. John Preston Bailey, Chief District Judge. (3:04-cr-00038-JPB-DJJ-1)

Submitted: March 31, 2009

Decided: May 26, 2009

Before MICHAEL and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

L. Richard Walker, Assistant Federal Public Defender, Clarksburg, West Virginia, for Appellant. Sharon L. Potter, United States Attorney, Paul T. Camilletti, Assistant United States Attorney, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Following his conviction for possession of a firearm by a convicted felon and possession of ammunition by a prohibited person, Christopher Allen Phipps appeals. He contends that the district court abused its discretion by denying his motion to dismiss the unlawful possession of ammunition charge, which he asserts resulted from prosecutorial vindictiveness after he asserted his right to a proper grand jury proceeding. We have reviewed the record and the briefs filed by the parties and find no abuse of discretion by the district court. United States v. Fiel, 35 F.3d 997, 1007 (4th Cir. 1994); see United States v. Armstrong, 517 U.S. 456, 464 (1996). We therefore affirm the denial of the motion to dismiss for the reasons stated by the district court, and thus affirm Phipps' conviction and sentence. See United States v. Phipps, No. 3:04-cr-00038-JPB-DJJ-1 (N.D.W. Va. Nov. 5, 2004). 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