UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4383

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

QUEDOLTHUIS MIGUEL JONES,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., Chief District Judge. (3:06-cr-00050-3)

Submitted: January 17, 2008 Decided: January 22, 2008

Before TRAXLER, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Mark P. Foster, Jr., NIXON, PARK, GRONQUIST & FOSTER, P.L.L.C., Charlotte, North Carolina, for Appellant. Gretchen C.F. Shappert, United States Attorney, Charlotte, North Carolina; Amy E. Ray, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

PER CURIAM:

Quedolthuis Miguel Jones appeals his sentence imposed following a guilty plea to conspiring to commit a robbery in violation of 18 U.S.C. § 1951 (2000); robbery in violation of § 1951; and using or carrying a firearm in violation of 18 U.S.C. § 924(c) (West 2000 and Supp. 2007). Jones was sentenced to 30 months' imprisonment on the § 1951 violations and an additional 84 months on the § 924(c) violation.

On appeal, Jones asserts that he should have been sentenced to no more than five years for the § 924(c) violation. According to Jones, the district court's enhancement of his sentence by two years based on a finding that the firearm was brandished, which was not alleged in the indictment, admitted by Jones, or found by a jury beyond a reasonable doubt, violated his Sixth Amendment right to trial by jury. Jones bases his argument on Cunningham v. California, 127 S. Ct. 856 (2007), which struck down California's determinate sentencing law. However, as Jones acknowledges, the Supreme Court, in Harris v. United States, 536 U.S. 545 (2002), has already decided this issue adversely to his position. Accordingly, as the Supreme Court has not overruled Harris, we affirm the judgment of the district court. See Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 484 (1989). We dispense with oral argument as the facts and

legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED