

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4723

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROBERT STEWART, a/k/a BK, a/k/a Omar Mason,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., Chief District Judge. (1:95-cr-00191-JAB)

Submitted: December 20, 2007

Decided: December 26, 2007

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

Affirmed by unpublished per curiam opinion.

Louis C. Allen III, Federal Public Defender, Gregory Davis, Senior Litigator, Winston-Salem, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Harry L. Hobgood, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Stewart appeals the district court's judgment revoking his supervised release. On appeal, Stewart raises two issues. First, Stewart argues that the district court abused its discretion by imposing consecutive terms of imprisonment upon revocation of his supervised release as the original terms of imprisonment were imposed concurrently. As Stewart's counseled brief recognizes, this issue was already decided adversely to him by this court in United States v. Johnson, 138 F.3d 115, 118-19 (4th Cir. 1998). Accordingly, his first alleged error is without merit. Stewart's second alleged error is that his constitutional rights were violated when the district court found by a preponderance of the evidence, instead of beyond a reasonable doubt, that he committed a new crime that violated the terms of his supervised release. Again, as Stewart's counseled brief recognizes, the United States Supreme Court decided this issue adversely to his position in Johnson v. United States, 529 U.S. 694, 700 (2000). Accordingly, Stewart's second alleged error is without merit, and we affirm the judgment of 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