

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4129

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID LYNCH,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Elkins. Robert E. Maxwell, Senior District Judge. (2:01-cr-00012-REM)

Submitted: July 17, 2006

Decided: July 31, 2006

Before WILKINSON, WILLIAMS, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James R. Fox, WARNER LAW OFFICES, PLLC, Charleston, West Virginia, for Appellant. Rita R. Valdrini, Acting United States Attorney, Stephen D. Warner, Assistant United States Attorney, Elkins, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Lynch appeals his sentence imposed after this court vacated his sentence and remanded to the district court for resentencing in light of United States v. Booker, 543 U.S. 220 (2005), and United States v. Hughes, 401 F.3d 540, 547 (4th Cir. 2005). At resentencing, the district court rejected Lynch's request for a jury trial on those facts that increased his offense level. The district court considered Booker, Hughes and the 18 U.S.C. § 3553(a) (2000) factors and sentenced Lynch to the same sentence imposed under the mandatory guidelines scheme. On appeal, Lynch contends: (1) he should have been given a jury trial to determine the factual issues; (2) the court's factual findings were clearly erroneous; and (3) the Supreme Court's decision to hold that the Sentencing Guidelines are now advisory is unconstitutional. We affirm.

At the original sentencing, the district court held a hearing and listened to witness testimony prior to determining the facts that increased Lynch's offense level. On appeal, we found there was no error. After the subsequent remand, there was no authority for the court to convene a jury trial in order to determine the factual findings. See Hughes, 401 F.3d at 560.

Because we found no error with respect to the district court's factual findings, we will not revisit the issue in this

appeal as it is the law of the case. United States v. Aramony, 166 F.3d 655, 661 (4th Cir. 1999).

Finally, Lynch's argument that it is unconstitutional for the guidelines to be advisory is without merit.

Accordingly, we affirm the district court's amended judgment. 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