UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4319

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROBERT BALLESTERO, a/k/a Rico,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:05-cr-00183)

Submitted: September 29, 2006 Decided: October 18, 2006

Before WILKINSON, MICHAEL, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Tim C. Carrico, CARRICO LAW OFFICES, LC, Charleston, West Virginia, for Appellant. Charles T. Miller, United States Attorney, R. Gregory McVey, Assistant United States Attorney, Huntington, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Robert Ballestero pled guilty to distributing crack cocaine (Count Three) and being a felon in possession of a firearm (Count Four) and was sentenced to eighty-seven months of imprisonment. On appeal, he argues that the district court improperly gave him six criminal history points for two Michigan convictions: (1) breaking without entering, and (2) receiving and concealing stolen property, which occurred more than fifteen years prior to the commencement of his instant offenses in violation of U.S. Sentencing Guidelines Manual § 4A1.2(e) (2005). For the reasons that follow, we affirm.

We review a district court's factual findings concerning sentencing factors for clear error and its legal determinations de novo. United States v. France, 164 F.3d 203, 209 (4th Cir. 1998). We find no error in the district court's conclusion that Ballestero was serving sentences of imprisonment for these two state offenses during the relevant fifteen-year period as discussed in USSG § 4A1.2, comment. (n.2). Accordingly, we affirm.

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