

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4596

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ALLAH BURMAN, a/k/a A,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Benson Everett Legg, Chief District Judge. (1:01-cr-00115-BEL-5)

Submitted: April 25, 2007

Decided: May 8, 2007

Before WILLIAMS, GREGORY, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Andrew H. Baida, ROSENBERG/MARTIN/GREENBERG, LLP, Baltimore, Maryland, for Appellant. Rod J. Rosenstein, United States Attorney, Christopher J. Romano, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Allah Burman appeals his sentence imposed following this court's remand for resentencing. See United States v. Burman, No. 03-4555, 2005 WL 2646897 (4th Cir. Oct. 17, 2005) (unpublished). Finding no error, we affirm.

On appeal, Burman initially contends that the presumption of reasonableness this court affords post-Booker* sentences imposed within a properly calculated Guidelines range is unconstitutional. This court's precedent, however, forecloses this argument. See, e.g., United States v. Montes-Pineda, 445 F.3d 375, 379 (4th Cir. 2006), petition for cert. filed, ___ U.S.L.W. ___ (U.S. July 21, 2006) (No. 06-5439); United States v. Johnson, 445 F.3d 339, 341-42 (4th Cir. 2006); United States v. Moreland, 437 F.3d 424, 433 (4th Cir.), cert. denied, 126 S. Ct. 2054 (2006); United States v. Green, 436 F.3d 449, 457 (4th Cir.), cert. denied, 126 S. Ct. 2309 (2006). Because one panel of this court cannot overrule another, we decline Burman's invitation to ignore established circuit authority. See United States v. Chong, 285 F.3d 343, 346-47 (4th Cir. 2002).

Burman also contends that the district court erred by sentencing him on facts that were not proven beyond a reasonable doubt. However, after Booker, sentencing courts are still required to calculate and consider the Guidelines range prescribed thereby

*United States v. Booker, 543 U.S. 220 (2005).

as well as the factors set forth in 18 U.S.C. § 3553(a) (2000). United States v. Hughes, 401 F.3d 540, 546 (4th Cir. 2005). This court has previously noted that sentencing factors should continue to be evaluated based on the preponderance of the evidence. United States v. Morris, 429 F.3d 65, 72 (4th Cir. 2005). Thus, we conclude the district court's use of a preponderance of the evidence standard was proper in Burman's post-Booker resentencing.

Accordingly, we deny Burman's motion for hearing and 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