

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4823

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JIMMIE ARCHIBALD SUTTON, a/k/a Ronnie L.
Hickman,

Defendant - Appellant.

Appeal from the United States District Court for the District of
South Carolina, at Florence. R. Bryan Harwell, District Judge.
(4:05-cr-00909-RBH)

Submitted: January 25, 2007

Decided: January 31, 2007

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

Affirmed by unpublished per curiam opinion.

William F. Nettles, IV, Assistant Federal Public Defender,
Florence, South Carolina, for Appellant. Rose Mary Parham,
Assistant United States Attorney, Florence, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jimmie Archibald Sutton pled guilty to being a felon in possession of a weapon in violation of 18 U.S.C. § 922(g) (2000). The district court sentenced Sutton to 185 months of imprisonment based on the finding that he was an armed career criminal because he had at least three previous convictions for violent felonies or serious drug offenses. See 18 U.S.C.A. § 924(e) (West 2000 & Supp. 2006); U.S. Sentencing Guidelines Manual ("USSG") § 4B1.4 (2005).

On appeal, counsel argues that the district court's finding that Sutton was an armed career criminal, absent Sutton admitting or a jury finding that he had at least three previous violent felonies or serious drug offenses, violates the Supreme Court's opinion in Apprendi v. New Jersey, 530 U.S. 466 (2000). In his brief, however, Sutton's counsel concedes that this court has rejected this argument. United States v. Cheek, 415 F.3d 349, 352-53 (4th Cir.), cert. denied, 126 S. Ct. 640 (2005); see Almendarez-Torres v. United States, 523 U.S. 224, 233-35 (1998).

The Government has filed a motion for summary affirmance citing the opinions in Almendarez-Torres and Cheek. Sutton's counsel has filed a response to the motion, stating that he has no objections. Accordingly, we grant the motion and affirm Sutton's sentence. 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