

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4304

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRYAN KEITH UMBERGER, a/k/a Brian Keith Umberger,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Walter D. Kelley, Jr., District Judge. (4:07-cr-00012-WDK-TEM-1)

Submitted: November 20, 2008

Decided: November 25, 2008

Before MOTZ and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

James S. Ellenson, LAW OFFICE OF JAMES STEPHEN ELLENSON, Newport News, Virginia, for Appellant. Chuck Rosenberg, United States Attorney, Jessica M. Norris, Special Assistant United States Attorney, Newport News, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Bryan Umberger was convicted by a jury of one count of possession of a firearm by a convicted felon and five counts of drug possession. He was sentenced to 236 months' imprisonment. On appeal, he argues that he was entitled to a jury determination on the issue of whether his prior felony convictions were violent felonies for purposes of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e) (2006). He argues that enhancement of his sentence under the ACCA violated his Sixth Amendment right to a jury trial.

Umberger's argument is foreclosed by the precedent of both the Supreme Court and this court. See James v. United States, 127 S. Ct. 1586, 1600 (2007) (in construing prior convictions as violent felonies for purposes of the ACCA, the court engages in "statutory interpretation, not judicial fact finding"); Almendarez-Torres v. United States, 523 U.S. 224 (1998) (the Constitution does not require that prior convictions be alleged in an indictment or proven to a jury beyond a reasonable doubt in order to be the basis of a sentence enhancement); United States v. Cheek, 415 F.3d 349 (4th Cir. 2005) (accord). Accordingly, we affirm Umberger's convictions and 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