UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4316

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEANDRE EUGENE HARWELL,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., District Judge. (1:07-cr-00287-NCT-1)

Submitted: October 10, 2008 Decided: April 7, 2009

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

Affirmed by unpublished per curiam opinion.

James B. Craven, III, Durham, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Michael A. DeFranco, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Leandre Eugene Harwell appeals the ninety-four-month sentence he received after he pled guilty to unlawful possession of a firearm by a convicted felon. 18 U.S.C. § 922(g)(1) (2000). The district court also imposed a consecutive fourteen-month sentence for a supervised release violation. We affirm.

Harwell contends that the district court erred by imposing an upward variance sentence without giving him reasonable notice that it might vary above the sentencing guideline range. However, the Supreme Court recently decided that an upward variance does not require notice under either Fed. R. Crim. P. 32(h) or Burns v. United States, 501 U.S. 129 (1991). See Irizarry v. United States, 128 S. Ct. 2198 (2008).

We therefore affirm the 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

* Because appellate counsel's brief is equivalent to a brief filed pursuant to Anders v. California, 386 U.S. 738, 744 (1967), Harwell was advised of his right to file a pro se supplemental brief. He did so, but did not raise any additional claims of error. We have examined the entire record for reversible error and found none.