

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

August 4, 2006

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHNNY LEE ANDERSON, JR.,

Defendant-Appellant.

No. 06-3043

(D.C. No. 04-CR-40094-01-SAC)

(D. Kan.)

ORDER AND JUDGMENT*

Before **KELLY, McKAY**, and **LUCERO**, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist in the resolution of this appeal. *See* Fed. R. App. P. 34(a)(2). The case is therefore ordered submitted without oral argument.

Appellant pleaded guilty to one count of distributing cocaine base, in violation of 21 U.S.C. § 841(a)(1), on February 9, 2005. He was sentenced on January 24, 2006, to 113 months' imprisonment. Appellant filed a timely appeal contesting the district court's sentencing him as a career offender. Specifically,

*This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Appellant argues that the Sixth Amendment requires that prior convictions be proven beyond a reasonable doubt before they can trigger the career offender provision and enhance the length of sentence.

We review sentences imposed after *United States v. Booker*, 543 U.S. 220 (2005), for reasonableness. We have held that prior convictions need not be charged in an indictment and proven to a jury beyond a reasonable doubt, nor admitted by an accused, to be used to enhance a statutory sentence. *United States v. Moore*, 401 F.3d 1220, 1224 (10th Cir. 2005). In addition, we have held that a district court's career offender findings do not implicate the Sixth Amendment. *United States v. Small*, 423 F.3d 1164, 1188 (10th Cir. 2005). We therefore find no support for Appellant's arguments.

We have carefully reviewed the briefs of Appellant and Appellee, the district court's findings, and the record on appeal, and for substantially similar reasons to those laid out by the district court in its May 11, 2005, and January 18, 2006, Sentencing Findings, we **AFFIRM** the district court's sentence.

Entered for the Court

Monroe G. McKay
Circuit Judge