

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4075

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHNNIE O'NEIL LEWIS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:17-cr-00254-BO-1)

Submitted: July 19, 2018

Decided: July 23, 2018

Before WILKINSON, MOTZ, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

G. Alan DuBois, Federal Public Defender, Eric Joseph Brignac, Chief Appellate Attorney, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. Robert J. Higdon, Jr., United States Attorney, Jennifer P. May-Parker, Seth M. Wood, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Johnnie O’Neil Lewis pled guilty to possessing a firearm and ammunition after having been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1) (2012). The district court upwardly departed from Lewis’ advisory U.S. Sentencing Guidelines range and imposed a 63-month sentence. Lewis appeals.

Lewis’ sole argument on appeal is that the district court erred at sentencing by improperly counting his prior North Carolina common law robbery conviction as a crime of violence under U.S. Sentencing Guidelines Manual § 4B1.2(a)(2) (2016). Counsel concedes, however, that this argument is squarely foreclosed by this court’s decision in *United States v. Gattis*, 877 F.3d 150, 156 (4th Cir. 2017), *cert. denied*, ___ U.S. __, 138 S. Ct. 1572 (2018) (holding that North Carolina state conviction for common law robbery “categorically qualifies as ‘robbery,’ as that term is used within [USSG] § 4B1.2(a)(2)”). In light of *Gattis*, we find that Lewis’ claim is without merit. We therefore affirm his sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Motz, and Judge Agee.

For the Court

/s/ Patricia S. Connor, Clerk