

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-2195

United States of America,

Appellee,

v.

Douglas Leon Harkreader,

Appellant.

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* Appeal from the United States

* District Court for the

* Western District of Arkansas.

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* [UNPUBLISHED]

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Submitted: February 13, 2006

Filed: March 6, 2006

Before RILEY, MELLOY, and BENTON, Circuit Judges.

PER CURIAM.

Douglas Leon Harkreader was convicted of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). By his criminal history, the district court¹ found that under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), the appropriate guidelines range was 188 to 235 months. The court then varied downward, sentencing Harkreader to the 180-month statutory minimum. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

¹The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.

First, Harkreader argues his Sixth Amendment rights were violated by the judge's determination of his prior convictions. To the contrary, "a prior felony conviction is a sentencing factor for the court, not a fact issue for the jury." *United States v. Carrillo-Beltran*, 424 F.3d 845, 848 (8th Cir. 2005) (citing *Almendarez-Torres v. United States*, 523 U.S. 224, 240–44 (1998)), *cert. denied*, No. 05-8358, 2006 WL 386793 (Feb. 21, 2006). This court follows *Almendarez-Torres*, which is still controlling. See *United States v. Levering*, 431 F.3d 289, 295 (8th Cir. 2005); *United States v. Morell*, 429 F.3d 1161, 1164 (8th Cir. 2005); *United States v. Torres-Alvarado*, 416 F.3d 808, 810 (8th Cir. 2005). Thus, the district court did not abuse its discretion by making findings about the prior felony convictions.

Next, Harkreader claims that mandatory minimum sentences are unconstitutional after *United States v. Booker*, 543 U.S. 220 (2005), and *Shepard v. United States*, 544 U.S. 13 (2005). Because he did not raise this constitutional challenge before the district court, this court reviews for plain error. See *United States v. Jackson*, 419 F.3d 839, 844 (8th Cir. 2005) (citing *United States v. Pirani*, 406 F.3d 543, 549–50 (8th Cir. 2005)), *cert. denied*, 126 S. Ct. 841 (2005). Under plain error review, this court will reverse only if there is 1) error 2) that is plain and 3) affects the defendant's substantial rights. See *United States v. Olano*, 507 U.S. 725, 732 (1993). In addition, the error must seriously affect "the fairness, integrity or public reputation of judicial proceedings." *Id.*

This court has determined that, post-*Booker*, mandatory minimum sentences are constitutional. See *United States v. Rojas-Coria*, 401 F.3d 871, 874 n.4 (8th Cir. 2005), *see also* *United States v. Nolan*, 397 F.3d 665, 667 & n.2 (8th Cir. 2005), *cert. denied*, 126 S. Ct. 195 (2005). Therefore, the district court did not err in sentencing Harkreader to the minimum sentence under the ACCA.

The judgment of the district court is affirmed.