

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-3942

United States of America,

Appellee,

v.

Damon Flamont Smith,

Appellant.

*

*

*

*

*

*

*

*

*

Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: August 7, 2007
Filed: August 10, 2007

Before BYE, RILEY, and MELLOY, Circuit Judges.

PER CURIAM.

In this direct criminal appeal of his 180-month sentence for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), Damon Flamont Smith challenges the district court's¹ determination that his three prior Missouri convictions for first-degree tampering with an automobile by operation are "violent felonies" within the meaning of 18 U.S.C. § 924(e)(1).

¹The Honorable Fernando J. Gaitan, Jr., Chief Judge, United States District Court for the Western District of Missouri.

Smith’s argument is unavailing. See United States v. Johnson, 417 F.3d 990, 999 (8th Cir. 2005) (holding that risks associated with Missouri offense of tampering by operation “are sufficient to warrant classifying it as a violent felony” for purposes of § 924(e)), cert. denied, 127 S. Ct. 285 (2006); United States v. Leathers, 354 F.3d 955, 959 (8th Cir. 2004) (one panel cannot overrule decision of another).²

Accordingly, we affirm.

²In a submission under Federal Rule of Appellate Procedure 28(j), Smith draws our attention to Leocal v. Ashcroft, 543 U.S. 1, 9-11 (2004) (construing “crime of violence” for purposes of 18 U.S.C. § 16(b) to require substantial risk of use of force). Smith’s reliance, however, is misplaced. See Johnson, 417 F.3d at 996 n.4 (“violent felony” under § 924(e) differs from definition at issue in Leocal).