

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3974

United States of America,

Appellee,

v.

Timothy D. Still,

Appellant.

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

[UNPUBLISHED]

Submitted: January 9, 2006

Filed: January 13, 2006

Before MURPHY, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Timothy D. Still pleaded guilty to being a felon in possession of a firearm. After the Supreme Court decided Blakely v. Washington, 124 S. Ct. 2531 (2004), but before the Court decided United States v. Booker, 125 S. Ct. 738 (2005), the district court* sentenced Still to sixty months in prison and two years of supervised release. Still appeals.

*The Honorable Henry E. Autrey, United States District Judge for the Eastern District of Missouri.

Acknowledging our contrary case law, see United States v. Nolan, 397 F.3d 665, 666-67 (8th Cir. 2005), Still first argues the district court committed error in classifying his earlier conviction for burglarizing a commercial building as a crime of violence. We must follow our earlier holdings foreclosing Still's argument, however, and only the court en banc can overrule them. United States v. Purkey, 428 F.3d 738, 762-63 (8th Cir. 2005).

Still also asserts the Sixth Amendment requires that his earlier conviction be proved to a jury beyond a reasonable doubt. We have recognized that even after Booker, the fact of an earlier conviction is for the court, not a jury. Nolan, 397 F.3d at 667 n.2; United States v. Cerna-Salguero, 399 F.3d 887, 887-88 (8th Cir. 2005); see Apprendi v. New Jersey, 530 U.S. 466, 489-90 (2000); Booker, 125 S. Ct. at 756.

We thus affirm Still's sentence.
