

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-3314

United States of America,

Appellee,

v.

Norman Hardesty,

Appellant.

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

[UNPUBLISHED]

Submitted: March 13, 2006

Filed: March 28, 2006

Before COLLOTON, HEANEY, and GRUENDER, Circuit Judges.

PER CURIAM.

Norman Hardesty pleaded guilty to two counts of being a felon in possession of firearms on two separate occasions, in violation of 18 U.S.C. § 922(g)(1). The district court¹ sentenced him to 235 months of imprisonment to be followed by five years of supervised release. On appeal, Hardesty argues his Sixth Amendment rights to trial by jury and proof beyond a reasonable doubt were violated because his prior convictions which were used to enhance his sentence were neither admitted by him, nor proved to a jury beyond a reasonable doubt.

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

Although Hardesty concedes that his argument is contrary to Almendarez-Torres v. United States, 523 U.S. 224 (1998), he contends that Blakely v. Washington, 542 U.S. 296 (2004), and Apprendi v. New Jersey, 530 U.S. 466 (2000) severely undermine the holding of Almendarez-Torres that a district court is entitled to determine the nature and existence of a defendant's prior convictions without submitting these issues to a jury. This court has repeatedly held since Blakely and United States v. Booker, 543 U.S. 220 (2005), that the determination of the nature of a defendant's prior offense is a legal question to be determined by the district court. See United States v. Kendrick, 423 F.3d 803, 810 (8th Cir. 2005); United States v. Camp, 410 F.3d 1042, 1047 (8th Cir.2005); United States v. Marcussen, 403 F.3d 982, 984 (8th Cir.), cert. denied, 126 S. Ct. 457 (2005). Accordingly, we affirm.
