

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 99-3519

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United States of America,	*	
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Appellee,	*	Appeal from the United States
	*	District Court for the Eastern
v.	*	District of Arkansas.
	*	
Kirk Brian Turner,	*	[UNPUBLISHED]
	*	
Appellant.	*	

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Submitted: April 11, 2000

Filed: April 19, 2000

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Before McMILLIAN and FAGG, Circuit Judges, and ROSENBAUM,\* District Judge.

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PER CURIAM.

Kirk Brian Turner pleaded guilty to distributing cocaine base in violation of 21 U.S.C. § 841(a)(1). The district court sentenced Turner as a career offender under U.S. Sentencing Guidelines Manual (U.S.S.G.) § 4B1.1, which applies when the defendant has "at least two prior felony convictions of . . . a crime of violence," *id.* § 4B1.1(3), because the court concluded Turner's California conviction for shooting at

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\*The Honorable James M. Rosenbaum, United States District Judge for the District of Minnesota, sitting by designation.

an inhabited dwelling was a crime of violence within the meaning of § 4B1.1. Turner appeals his sentence, challenging this conclusion.

Section 4B1.2(a) of the Sentencing Guidelines defines a "crime of violence" for the purposes of § 4B1.1 as "any offense under federal or state law . . . that has as an element the use, attempted use or threatened use of physical force against the person of another, or . . . otherwise involves conduct that presents a serious risk of physical injury to another." *Id.* § 4B1.2(a). Turner contends his California offense was just a crime against property rather than a crime of violence as defined in U.S.S.G. § 4B1.2(a). We disagree.

In 1994, Turner was convicted of violating § 246 of the California Penal Code, which provided: "Any person who shall maliciously and willfully discharge a firearm at an inhabited dwelling . . . is guilty of felony . . . . As used in this section, 'inhabited' means currently being used for dwelling purposes, whether occupied or not." The conviction resulted from Turner's discharge of a gun in a house occupied by Turner's girlfriend following an angry confrontation with her. We agree with the district court that Turner's conviction was for a crime of violence within the meaning of § 4B1.1. See United States v. Weinert, 1 F.3d 889, 891 (9th Cir. 1993) (per curiam) (shooting at an inhabited dwelling in violation of Cal. Penal Code § 246 is a crime of violence within the meaning of U.S.S.G. § 4B1.1). We thus affirm Turner's sentence.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.