

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-3548

United States of America,

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Appellee,

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v.

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Appeal from the United States

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District Court for the

Kevin McRay Smith,

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Eastern District of Missouri.

*

Appellant.

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[UNPUBLISHED]

Submitted: July 9, 2001

Filed: July 16, 2001

Before BOWMAN, BEAM, and LOKEN, Circuit Judges.

PER CURIAM.

Kevin McRay Smith appeals the sentence imposed by the district court¹ following his guilty plea to drug offenses. The district court sentenced Smith to 188 months imprisonment and 5 years supervised release. On appeal, Smith challenges the district court's finding that he was a career offender, arguing that his burglaries of commercial buildings should not be considered crimes of violence under U.S.S.G. §§ 4B1.1 and 4B1.2.

¹The Honorable Rodney W. Sippel, United States District Judge for the Eastern District of Missouri.

As Smith concedes, in United States v. Hascall, 76 F.3d 902, 906 (8th Cir.), cert. denied, 519 U.S. 948 (1996), this court determined that second-degree burglary of a commercial building is a crime of violence. Smith urges us to find that Hascall was wrongly decided. Even if we were inclined to do so, we are not at liberty to overturn the decision; only the court sitting en banc may do so. See United States v. Reynolds, 116 F.3d 328, 329 (8th Cir. 1997) (refusing to consider argument that Hascall was wrongly decided).

Accordingly, we affirm.

A true copy.

Attest:

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