

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-1376

United States of America,

Appellee,

v.

Frankie Allen Whaley, Jr.,

Appellant.

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

[UNPUBLISHED]

Submitted: November 25, 2005

Filed: December 6, 2005

Before MELLOY, MAGILL, and GRUENDER, Circuit Judges.

PER CURIAM.

Frankie Whaley appeals the 96-month sentence the district court¹ imposed after he pleaded guilty to being a felon in possession of a firearm. See 18 U.S.C. § 922(g)(1). Citing United States v. Booker, 543 U.S. 220 (2005), Whaley argues that the district court effectively treated the Sentencing Guidelines as mandatory by imposing a sentence within the calculated Guidelines range, and that the court violated the Sixth Amendment by enhancing his sentence based on judge-found facts as to his prior convictions.

¹The Honorable George Howard, Jr., United States District Judge for the Eastern District of Arkansas.

We have already rejected a similar Sixth Amendment challenge, see United States v. Torres-Alvarado, 416 F.3d 808 (8th Cir. 2005), and we conclude there was no Booker error because the district court calculated the Guidelines sentencing range properly, treated the Guidelines as advisory, and imposed a sentence that was not unreasonable, see United States v. Pirani, 406 F.3d 543, 551 (8th Cir.) (en banc), cert. denied, 126 S.Ct. 266 (2005). Accordingly, we affirm.
