

APR 08 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL PAUL JONES,

Defendant - Appellant.

No. 08-30110

D.C. No. 6:05-cr-60111-AA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges

Michael Paul Jones appeals the sentence imposed following his guilty plea to possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He contends that district court erred in imposing a fifteen-year mandatory minimum term under the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Armed Career Criminal Act on the basis that he had at least three previous convictions for a serious drug offense. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Jones contends that his five prior Oregon convictions for delivery of a controlled substance were not serious drug offenses under 18 U.S.C. § 924(e)(2)(A)(ii) because, even though the maximum statutory term was ten years under Or. Rev. Stat. § 161.605(2), the state sentencing guidelines capped the term at ninety months. As Jones acknowledges, his contention is foreclosed. *See United States v. Mayer*, No. 07-30274, slip op. 3295, 3322 (9th Cir. Mar. 16, 2009); *United States v. Parry*, 479 F.3d 722, 724-26 (9th Cir.), *cert. denied*, 128 S. Ct. 249 (2007); *see also United States v. Rodriguez*, 128 S. Ct. 1783, 1792 (2008) (holding that guidelines cap does not decrease maximum term of imprisonment for purposes of ACCA).

AFFIRMED.