

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-15220
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEBRUARY 20, 2009 THOMAS K. KAHN CLERK
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D. C. Docket No. 08-60042-CR-WJZ

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TALLIUS JERROD HARRELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(February 20, 2009)

Before CARNES, WILSON and PRYOR, Circuit Judges.

PER CURIAM:

Tallius Harrell appeals his sentence of 180 months of imprisonment for

possession of a firearm and ammunition by a convicted felon. 18 U.S.C. §§ 922(g)(1), 924(e). Harrell argues, for the first time on appeal, that the district court violated the Fifth and Sixth Amendment when it sentenced him based on convictions that were not listed in his indictment. Harrell concedes that his argument is foreclosed by the decision of the Supreme Court in Almendarez-Torres v. United States, 523 U.S. 224, 228, 118 S. Ct. 1219, 1223–26 (1998). The district court did not plainly err when it sentenced Harrell.

Harrell's sentence is **AFFIRMED**.