

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1306

UNITED STATES OF AMERICA

v.

JAMES BARRY EARHART,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

(Dist. Court No. 02-cr-00119)

District Court Judge: Hon. William W. Caldwell

Submitted Under Third Circuit LAR 34.1(a)
July 21, 2003

Before: ALITO and FUENTES, Circuit Judges, and SURRICK,* District Judge.

(Opinion Filed: July 31, 2003)

OPINION OF THE COURT

ALITO, Circuit Judge:

* The Hon. R. Barclay Surrick, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

James Barry Earhart pled guilty to possession of firearms by a felon and by a drug user, in violation, respectively, of 18 U.S.C. § 922(g)(1), (g)(3). He sought a downward departure under U.S.S.G. § 2K2.1, which provides in pertinent part:

If the defendant . . . possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition, decrease the offense level . . . to level 6.

U.S.S.G. § 2K2.1(b)(2). The District Court denied the motion, finding that Earhart’s “credibility is subject to question” and that “I really don’t believe that the only reason he possessed those weapons was for sporting purposes or other lawful uses.” We review such factual findings relied upon in the application of a sentencing guideline for clear error. United States v. Jenkins, 275 F.3d 283, 286 (3d Cir. 2001).

Earhart contends that he kept rifles and handguns “primarily” for hunting and for recreational target shooting. In United States v. Bossinger, 12 F.3d 28 (3d Cir. 1993), we held that these activities constitute “lawful sporting purposes” within the meaning of § 2K2.1. See id. at 30 (holding that “lawful sporting purposes” consists of all “lawful recreational use” of firearms). Earhart concedes that the District Court was entitled to evaluate his credibility, but he argues that the Court erred in finding that the firearms were not solely for recreational use because the government presented “no evidence to the contrary.” We disagree. The lone precedent Earhart submits as ostensible support for this position, Williams v. New Bethlehem Burial Service, 74 A.2d 677, 680 (Pa. Super. 1950), is entirely inapposite and, in any event, does not bind this Court. Williams’s

holding that certain factual findings may be reversed only if there is a “capricious disregard of competent evidence” by the trial court is nothing more than a standard of review used by Pennsylvania’s state appellate courts. In this case, Earhart had the burden of proving, “by a preponderance of the evidence, that the actual or intended use [of his firearms] was solely for sporting or recreational purposes.” United States v. Uzelac, 921 F.2d 204, 206 (9th Cir. 1990). Earhart offered no evidence to carry his burden other than his own testimony and his relatives’ corroboration. The District Court found his claims not credible. Because he failed to carry his burden, the Court’s inquiry properly ended there. See United States v. Solomon, 274 F.3d 825, 829 (4th Cir. 2001) (“A finding as to the absence of proof of unlawful use cannot translate to, or equal, a finding that the firearm was used ‘solely for lawful sporting purposes or collection.’”). We accordingly find no grounds for reversal, and we affirm the judgment of the District Court.

TO THE CLERK OF THE COURT:

Kindly file the foregoing Not Precedential Opinion.

/s/ Samuel A. Alito

Circuit Judge