

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NOT FOR PUBLICATION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.

MARTIN ELERY BEAL,

Defendant - Appellant.

No. 08-30083

D.C. No. 6:06-cr-60135-HO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges

Martin Elery Beal appeals the 188-month sentence imposed following his conditional guilty plea to three counts of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He contends that the district court erred in

* 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).

treating his four prior convictions for first degree burglary under Or. Rev. Stat. § 164.225 as violent felonies under the Armed Career Criminal Act. This contention is foreclosed by *United States v. Mayer*, No. 07-30274, slip op. 3295, 3320-21 (9th Cir. Mar. 16, 2009) (holding that first degree burglary under § 164.225 is categorically a “violent felony” under the Act’s residual clause).

AFFIRMED.