

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted March 10, 2011*

Decided March 17, 2011

Before

FRANK H. EASTERBROOK, *Chief Judge*

DIANE S. SYKES, *Circuit Judge*

JOHN DANIEL TINDER, *Circuit Judge*

No. 10-3016

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

SCOTT NJOS,
Defendant-Appellant.

Appeal from the United
States District Court for the
Northern District of Illinois,
Western Division.

No. 07 CR 50036
Frederick J. Kapala, *Judge.*

Order

The sentence imposed following our remand of December 30, 2009, exceeds the Guideline range calculated by the district judge. Relying on 18 U.S.C. §3742(g)(2), defendant contends that the sentence therefore is invalid. In *Pepper v. United States*, No. 09–6822 (U.S. Mar. 2, 2011), slip op. 15–20, the Supreme Court concluded that §3742(g)(2) violates the Constitution by setting limits on district judges’ sentencing discretion in the absence of findings made by a jury (or the judge in a bench trial), or a

* This successive appeal has been submitted to the original panel under Operating Procedure 6(b). After examining the briefs and the record, we have concluded that oral argument is unnecessary. See Fed. R. App. P. 34(a); Cir. R. 34(f).

defendant's waiver of his rights under the sixth amendment. This statute therefore is not a basis to upset the sentence that the district judge concluded is appropriate here. Because defendant does not contend that his sentence is unreasonable, apart from his reliance on §3742(g)(2), the judgment of the district court is

AFFIRMED.