

No. 08-5716

USA v. Delmaro Johnson

process rights by sentencing him to the mandatory minimum rather than within his lower, otherwise-applicable Guidelines range.

As Johnson acknowledges, this Court has held that mandatory-minimum sentences do not violate due process. *See United States v. Gardner*, 931 F.2d 1097, 1099 (6th Cir. 1991). Under the law-of-the-circuit doctrine, this panel may not overrule a prior panel’s decision “unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision.” *Salmi v. Sec’y of Health and Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985) (citation omitted). Johnson argues that *United States v. Booker*, 543 U.S. 220 (2005), requires modification of our prior holding in *Gardner* because *Booker* “effectively ended the era in which sentences were determined as a matter of law,” *United States v. Grant*, 524 F. Supp. 2d 1204, 1215 (C.D. Cal. 2007), *vacated*, 312 F. App’x 39 (9th Cir. 2009). To the contrary, this Court has reaffirmed the constitutionality of mandatory-minimum sentences post-*Booker*. *See United States v. Franklin*, 499 F.3d 578, 586 (6th Cir. 2007) (“Although *Booker* gave substantial discretion to the sentencing court to impose sentences below a mandatory maximum, nothing in *Booker* allows the court to negate the imposition of a mandatory minimum sentence.”).

Therefore, Johnson’s due process argument is foreclosed by the law-of-the-circuit doctrine, and his sentence is **AFFIRMED**. The government’s motion to dismiss Johnson’s appeal is **DENIED** as moot.