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USA v. Ernest Valentine

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2253

UNITED STATES OF AMERICA

v.

ERNEST VALENTINE, a/k/a BOP

Earnest Valentine,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 2-16-cr-00264-001)
District Judge: Honorable Jose L. Linares

Submitted Under Third Circuit L.A.R. 34.1(a)
March 23, 2018

Before: HARDIMAN, BIBAS, and ROTH, *Circuit Judges*.

(Opinion Filed: June 7, 2018)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

HARDIMAN, *Circuit Judge*.

Ernest Valentine appeals the District Court’s judgment of sentence, claiming legal error in the calculation of his criminal history. According to Valentine, § 4A1.2(c)(2) of the United States Sentencing Guidelines precluded the District Court from assigning him a criminal history point for his convictions under a New Jersey statute forbidding “loitering for the purpose of illegally using, possessing or selling a controlled substance.” N.J. Stat. Ann. § 2C:33-2.1(b). As Valentine acknowledges, we rejected this argument in *United States v. Hines*, 628 F.3d 101, 109–14 (3d Cir. 2010). Because we—like the District Court—are bound by *Hines* unless and until it is overturned by the Supreme Court or by this Court sitting en banc, *see* 3d Cir. I.O.P. 9.1, we will affirm.