

UNPUBLISHED

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

DANNY KENNEDY GENERAL, a/k/a  
Young,

*Defendant-Appellant.*

No. 00-4346

Appeal from the United States District Court  
for the Eastern District of North Carolina, at Raleigh.  
Malcolm J. Howard, District Judge.  
(CR-99-68)

Submitted: November 30, 2001

Decided: December 20, 2001

Before WIDENER, WILKINS, and LUTTIG, Circuit Judges.

---

Affirmed in part and vacated and remanded in part by unpublished  
per curiam opinion.

---

**COUNSEL**

Christopher F. Cowan, COWAN, NORTH & LAFRATTA, L.L.P.,  
Richmond, Virginia, for Appellant. Janice McKenzie Cole, United  
States Attorney, Anne M. Hayes, Assistant United States Attorney,  
Raleigh, North Carolina, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

---

### OPINION

#### PER CURIAM:

Danny Kennedy General pled guilty pursuant to a plea agreement to Count 1, conspiracy to possess with intent to distribute cocaine base, cocaine powder, heroin, and marijuana, and to Count 4, using and carrying a firearm during and in relation to a drug trafficking crime. General was sentenced to 294 months imprisonment for Count 1 and 60 months consecutively for Count 4. The court also imposed a five-year term of supervised release. On appeal, he raises four issues. For the reasons that follow, we affirm in part, and vacate and remand in part.

First, General alleges that the district court committed reversible error because it failed to inform him at his plea hearing that the mandatory minimum sentence for Count 4 is five years. We find that the district court's failure to follow Fed. R. Crim. P. 11(c) was harmless as this information was contained in General's plea agreement. *See United States v. Goins*, 51 F.3d 400, 402 (4th Cir. 1995) (stating standard); *United States v. DeFusco*, 949 F.2d 114, 117 (4th Cir. 1991) (holding Rule 11 error harmless if information adequately covered in plea agreement).

Second, we do not find that the district court abused its discretion by denying General's motion to withdraw his plea. *United States v. Ubakanma*, 215 F.3d 421, 424 (4th Cir. 2000) (citing standard). General has failed to establish his burden to show a "fair and just reason" for withdrawal. Fed. R. Crim. P. 32(e); *see also United States v. Lambey*, 974 F.2d 1389, 1394 (4th Cir. 1992); *United States v. Moore*, 931 F.2d 245, 248 (4th Cir. 1991).

Next, General alleges that his 294-month sentence for Count 1 is erroneous in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). More specifically, he alleges that his sentence should be no more than

240 months for an unspecified amount of a Schedule I or II drug as stated in 21 U.S.C.A. § 841(b)(1)(C) (West Supp. 2001). In *United States v. Dinnall*, 269 F.3d 418, 420-24 (4th Cir. 2001), this court affirmed the defendant's conviction for conspiracy to possess with intent to distribute an unspecified amount of cocaine base but vacated and remanded Dinnall's 360-month sentence for the district court to impose a sentence no greater than 240 months under § 841(b)(1)(C). We find *Dinnall* controlling here and affirm General's conviction for Count 1, but vacate and remand his sentence for the district court to impose a sentence within the 240-month statutory maximum under § 841(b)(1)(C).

Finally, General's argument that his sentence of five years of supervised release is also improper has been rejected by this court. See *United States v. Pratt*, 239 F.3d 640, 647-48 (4th Cir. 2001). We affirm General's conviction and sentence for Count 4.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

*AFFIRMED IN PART, VACATED  
AND REMANDED IN PART*