

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

KYLE G. MITCHELL,
Defendant-Appellant.

No. 00-4437

Appeal from the United States District Court
for the Southern District of West Virginia, at Beckley.
David A. Faber, District Judge.
(CR-99-162)

Submitted: December 8, 2000

Decided: January 11, 2001

Before WIDENER, WILKINS, and NIEMEYER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Mary Lou Newberger, Acting Federal Public Defender, Edward H. Weis, First Assistant Federal Public Defender, Charleston, West Virginia, for Appellant. Rebecca A. Betts, United States Attorney, John L. File, Assistant United States Attorney, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Kyle G. Mitchell appeals his conviction and sentence for conspiracy to possess with intent to distribute and distribution of cocaine in violation of 21 U.S.C.A. § 846 (West 2000). Finding no reversible error, we affirm.

On appeal, Mitchell contends that the Supreme Court's recent decision in *Apprendi v. New Jersey*, 530 U.S. ___, 120 S. Ct. 2348 (2000), requires that his conviction and sentence be vacated. Because Mitchell's sentence of 135 months' imprisonment and five years' supervised release does not exceed the twenty-year statutory maximum term of imprisonment or unspecified maximum term of supervised release set out in 21 U.S.C.A. § 841(b)(1)(C) (West 1999) for the core offense without enhancement for drug quantity, we find that his sentence is permissible under *Apprendi*. See *United States v. Angle*, 230 F.3d 113 (4th Cir. 2000); *United States v. Aguayo-Delgado*, 220 F.3d 926, 933 (8th Cir.), *cert. denied*, ___ U.S. ___, 2000 WL 1634209 (U.S. Nov. 27, 2000) (No. 00-6746). Accordingly, we affirm Mitchell's conviction and sentence. 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