

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-4666

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

HAROLD GENE BARROW, III,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Lacy H. Thornburg, District Judge. (CR-00-26)

Submitted: January 10, 2001

Decided: January 23, 2001

Before WILLIAMS, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Andrew B. Banzhoff, Asheville, North Carolina, for Appellant. Mark T. Calloway, United States Attorney, Brian Lee Whisler, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Harold Gene Barrow, III, appeals from the district court's order denying his motion to dismiss the indictment. We dismiss the appeal for lack of jurisdiction because the order is not appealable. Although Barrow has entered a conditional guilty plea and his plea has been accepted by the district court, he has not yet been sentenced. This Court may exercise jurisdiction only over final orders, 28 U.S.C.A. § 1291 (West 1993), and certain interlocutory and collateral orders, 28 U.S.C.A. § 1292 (West 1993 & Supp. 2000); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The order denying Barrow's motion to dismiss the indictment on the ground that the statute Barrow was charged with violating was unconstitutional is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we dismiss the appeal as interlocutory. 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.

DISMISSED