

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JAMES MARCUS LLOYD, III,
Defendant-Appellant.

No. 00-4761

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

JAMES MARCUS LLOYD, III,
Defendant-Appellee.

No. 00-4792

Appeal from the United States District Court
for the District of South Carolina, at Columbia.
Matthew J. Perry, Jr., Senior District Judge.
(CR-00-280)

Submitted: May 10, 2001

Decided: May 24, 2001

Before WIDENER, NIEMEYER, and MICHAEL, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

John H. Hare, Assistant Federal Public Defender, Columbia, South Carolina, for Appellant. Scott N. Schools, United States Attorney,

Stacey D. Haynes, Assistant United States Attorney, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

James Marcus Lloyd, III, pled guilty to one count of possession with intent to distribute and distribution of cocaine. He appeals the district court's finding under *U.S. Sentencing Guidelines Manual* § 2D1.1(b)(1) (1998), that he possessed a handgun in connection with a drug offense. The Government cross-appeals from the district court's decision that the rule in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), prohibited the two-level enhancement under USSG § 2D1.1(b)(1). We vacate the judgment of conviction and remand for further proceedings consistent with this opinion.

The district court's factual finding that Lloyd possessed a handgun in connection with a drug offense was not clearly erroneous. *United States v. Apple*, 915 F.2d 899, 913-14 (4th Cir. 1990). However, we find that the court erred as a matter of law by finding that *Apprendi* prohibited the two-level enhancement. *United States v. Kinter*, 235 F.3d 192, 199-201 (4th Cir. 2000).

Accordingly, we vacate the judgment of conviction and remand for resentencing consistent with this opinion. We also deny Lloyd's petition for en banc hearing. 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.

VACATED AND REMANDED