

UNPUBLISHED

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

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*  
v.  
DONNY RAY KYLE,  
*Defendant-Appellant.*

No. 01-4219

Appeal from the United States District Court  
for the Southern District of West Virginia, at Charleston.  
Charles H. Haden II, Chief District Judge.  
(CR-00-212)

Submitted: August 9, 2001

Decided: August 20, 2001

Before NIEMEYER, MOTZ, and GREGORY, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

Carl J. Roncaglione, Jr., Charleston, West Virginia, for Appellant.  
Charles T. Miller, United States Attorney, R. Booth Goodwin, II,  
Assistant United States Attorney, Charleston, West Virginia, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

**OPINION**

## PER CURIAM:

Donny Ray Kyle appeals the twelve month sentence he received after pleading guilty to aiding and abetting distribution of cocaine, in violation of 21 U.S.C.A. § 841(a)(1) (West 1999); 18 U.S.C. § 2 (1994). Kyle contends the district court erred in denying him an adjustment for acceptance of responsibility under *U.S. Sentencing Guidelines Manual* § 3E1.1 (2000). We affirm.

Kyle argues the district court erred by denying him an adjustment for acceptance of responsibility because he tested positive for cocaine after his guilty plea. Kyle asserts he provided substantial assistance to the Government and presented evidence of post-offense rehabilitation that should merit an adjustment. A district court's decision to grant or deny an adjustment for acceptance of responsibility pursuant to USSG § 3E1.1 is a factual determination reviewed for clear error. *United States v. Miller*, 77 F.3d 71, 74 (4th Cir. 1996). The determination of the district court is entitled to great deference. USSG § 3E1.1, comment. (n.5). Continued drug use is an appropriate reason to deny an adjustment for acceptance of responsibility. *See United States v. Kidd*, 12 F.3d 30, 34 (4th Cir. 1993); *United States v. Underwood*, 970 F.2d 1336, 1339 (4th Cir. 1992). We find the district court did not clearly err by denying an adjustment for acceptance of responsibility.

Accordingly, we affirm Kyle's 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*