

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RICHARD S. BARTH,
Defendant-Appellant.

No. 01-4370

Appeal from the United States District Court
for the District of Maryland, at Greenbelt.
Deborah K. Chasanow, District Judge.
(CR-99-310-DKC)

Submitted: September 13, 2001

Decided: October 16, 2001

Before NIEMEYER, WILLIAMS, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Nathan Lewin, Alyza D. Lewin, Noam B. Fischman, MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO, P.C., Washington, D.C., for Appellant. Stephen J. Schenning, United States Attorney, Sandra Wilkinson, Assistant United States Attorney, Greenbelt, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Appellant Richard Barth pled guilty to illegal transportation, by computer, of child pornography in interstate commerce. The Government appealed his sentence, arguing that the district court erred in granting a downward departure based on the impact Barth's conviction had on his daughter and her family. This Court agreed with the Government, and vacated Barth's sentence and remanded for resentencing. *United States v. Barth*, 2001 WL 117499 (4th Cir. Feb. 12, 2001) (No. 00-4172) (unpublished). At resentencing, Barth moved for a downward departure based upon his post-sentence rehabilitation and his family circumstances. The district court found that it did not have the authority at resentencing to consider a downward departure based upon post-sentencing rehabilitation. The court further found, as it did at the initial sentencing, that a downward departure based on family circumstances was not warranted. Finding no reversible error, we affirm.

In *United States v. Bell*, 5 F.3d 64, 67 (4th Cir. 1993), this Court found that at resentencing upon a remand the district court may only consider relevant evidence "that it could have heard at the first hearing" with respect to any particular issue. *Id.* (quoting *United States v. Cornelius*, 968 F.2d 703, 705 (8th Cir. 1992)). Thus, we find the district court properly ruled that it was without authority to consider a downward departure based on post-sentencing rehabilitation. We will not review the district court's decision not to depart based on family circumstances. *United States v. Edwards*, 188 F.3d 230, 238-39 (4th Cir. 1999).

Accordingly, we affirm the district court'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