

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JAMES WAVERLY BREEDLOVE, JR.,
Defendant-Appellant.

No. 01-4759

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
James A. Beaty, Jr., District Judge.
(CR-01-63)

Submitted: April 25, 2002

Decided: May 6, 2002

Before WILLIAMS and KING, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Louis C. Allen III, Federal Public Defender, William S. Trivette, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, John W. Stone, Jr., Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Pursuant to a written plea agreement, James Waverly Breedlove, Jr., pled guilty to bank robbery. The agreement provided that "the Government will make no recommendation to the Court as to what sentence the defendant should receive within the sentencing guideline range." At sentencing, the court determined Breedlove's guideline range to be 151 to 188 months. Contrary to the terms of the plea agreement, the Assistant United States Attorney argued in favor of a sentence at the higher end of the range. The court thereafter imposed a 180-month sentence.

Breedlove argues, and the Government concedes, that this constitutes a breach of the plea agreement. Due to the Government's breach—albeit inadvertent—of the plea agreement Breedlove failed to receive the benefit of his bargain. *See Santobello v. New York*, 404 U.S. 257, 262 (1971). We therefore vacate the sentence and remand for resentencing before a different district court judge. *See United States v. Peglera*, 33 F.3d 412, 415 (4th Cir. 1994); *United States v. Brown*, 500 F.2d 375, 378 (4th Cir. 1974). 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