

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>
v.
TREMELLE J. YOUNG, <i>Defendant-Appellant.</i>

No. 01-7504

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
James R. Spencer, District Judge.
(CR-97-306)

Submitted: December 13, 2001

Decided: January 15, 2002

Before WILKINS, WILLIAMS, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Tremelle J. Young, Appellant Pro Se. S. David Schiller, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Following a jury trial on June 22, 1998, Tremelle J. Young was convicted in a four count indictment of violations of 18 U.S.C.A. §§ 922(g)(1), (2) (West 2000), governing possession of a firearm and ammunition by a convicted felon, and 18 U.S.C.A. § 922(g)(9), (2) (West 2000), proscribing possession of a firearm and ammunition by a person convicted of domestic violence. Young appealed to this Court but we dismissed the appeal without prejudice because the only relief sought was a new trial, based on new evidence, and such relief is appropriately sought in the district court. Subsequently, Young filed a motion pursuant to Fed. R. Crim. P. 33, which the district court denied. Young appeals the denial of his motion.

Applying the present version of Fed. R. Crim. P. 33, we hold that Young's motion was timely filed. Nevertheless, we hold that the district court did not err by denying the motion as the evidence Young identified as the basis for his motion is either not new or not sufficiently material and probative to conclude that it would likely result in acquittal at a new trial. Accordingly, we find the district court did not abuse its discretion in dismissing Young's motion and we therefore affirm the district court's order. 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