Vacated by Supreme Court, January 24, 2005

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4292

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TENNYSON HARRIS, a/k/a Teddy, a/k/a Mark T,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Peter J. Messitte, District Judge. (CR-00-253-PJM)

Submitted: May 3, 2004 Decided: August 25, 2004

Before KING, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Timothy S. Mitchell, LAW OFFICE OF TIMOTHY S. MITCHELL, Greenbelt, Maryland, for Appellant. Thomas M. DiBiagio, United States Attorney, Mythili Raman, Assistant United States Attorney, Greenbelt, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Tennyson Harris appeals his conviction of a single count of conspiracy to distribute and possess with intent to distribute 1,000 kilograms or more of marijuana, in violation of 21 U.S.C. § 846 (2000). Finding no reversible error, we affirm.*

On appeal, Harris first asserts that the district court erred in denying his request that the jury be instructed on the definition of reasonable doubt. We have held that "it is improper for a district court to define reasonable doubt for a jury unless the jury itself requests a definition." United States v. Najjar, 300 F.3d 466, 486 (4th Cir.), cert. denied, 537 U.S. 1094 (2002). Harris acknowledges the rule in this circuit, but suggests that this precedent be reconsidered. Because a panel of this court may not overrule a prior published decision of the court, Harris' assertion of error is baseless. See United States v. Ruhe, 191 F.3d 376, 388 (4th Cir. 1999).

Harris also argues that the district court erred in refusing to give an instruction he proffered on multiple

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*Counsel for Harris has filed a motion seeking permission to provide supplemental argument so as to challenge certain aspects of his sentence under Blakely v. Washington, 124 S. Ct. 2531 (2004). The motion is hereby granted, and the motion to file supplemental argument is deemed to provide the supplemental argument regarding the effects of Blakely. After consideration of the order issued by the en banc court in United States v. Hammoud, No. 03-4253, 2004 WL 17030309 (4th Cir. Aug. 2, 2004) (order), petition for cert. filed, __ U.S.L.W. __ (U.S. Aug. 6, 2004) (No. 04-193), we find no error in Harris' sentence.

conspiracies, and improperly responded to a question from the jury. "A multiple conspiracy instruction is not required unless the proof at trial demonstrates that appellants were involved only in separate conspiracies unrelated to the overall conspiracy charged in the indictment." United States v. Squillacote, 221 F.3d 542, 574 (4th Cir. 2000) (quoting United States v. Kennedy, 32 F.3d 876, 884 (4th Cir. 1994)). Our review of the record convinces us that the district court properly refused to give the requested instruction. We have also reviewed the district court's response to the jury's request for clarification concerning its consideration of the evidence of conspiracies, and conclude that the district court did not abuse its discretion in its response. United States v. Smith, 62 F.3d 641, 646 (4th Cir. 1995).

We therefore affirm Harris' conviction and 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