

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4731

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RAY DEMOND WALLER,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Charlottesville. James H. Michael, Jr., Senior District Judge. (CR-98-51)

Submitted: February 12, 2004

Decided: February 20, 2004

Before LUTTIG, WILLIAMS, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

John E. Davidson, DAVIDSON & KITZMANN, Charlottesville, Virginia, for Appellant. John L. Brownlee, United States Attorney, Ray B. Fitzgerald, Jr., Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Ray Demond Waller appeals his twenty-four months sentence imposed by the district court for violations of his supervised release. We affirm.

Waller did not object to imposition of sentence at the revocation hearing, and thus this court's review is for plain error. United States v. Olano, 507 U.S. 725, 732 (1993) (providing standard). Chapter Seven of the U.S. Sentencing Guidelines Manual sets forth policy statements offering recommended sentencing ranges for revocation of probation and supervised release. Chapter Seven is advisory and non-binding. United States v. Davis, 53 F.3d 638, 642 (4th Cir. 1995). However, the court should consider the policy statements before imposing sentence. Id. If the court has considered the relevant factors and the applicable policy statements, the court has the discretion to impose a sentence outside the ranges set forth in the Guidelines. Id. "A court need not engage in ritualistic incantation in order to establish its consideration" of the policy statements. Id.

Here, the district court considered the relevant factors and policy statements at issue, and we conclude that the court did not plainly err in imposing the sentence. Therefore, we affirm. 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