

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6230

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PERNELL JEFFREY SELLERS,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. W. Craig Broadwater, District Judge. (CR-97-20)

Submitted: August 7, 2003

Decided: August 25, 2003

Before WIDENER and NIEMEYER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Harry A. Smith, III, JORY & SMITH, Elkins, West Virginia, for Appellant. Thomas E. Johnston, United States Attorney, Zelda E. Wesley, Assistant United States Attorney, Clarksburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Pernell Jeffrey Sellers was convicted of: Count 2, conspiracy to distribute cocaine, 18 U.S.C. § 846 (2000); Count 3, killing or causing a killing in furtherance of a continuing criminal enterprise, 21 U.S.C. § 848(e) (2000); Count 4, interstate travel in aid of racketeering, 18 U.S.C. §§ 1952, 2 (2000); and Count 5, using and carrying a firearm during a crime of violence. 18 U.S.C. §§ 924(c), 2 (2000). This court affirmed the convictions on appeal. See United States v. Sellers, No. CR-97-20 (N.D.W. Va. Aug. 17, 2000) (unpublished).

Thereafter, Sellers filed a motion for new trial based upon Denise Grantham's recantation of her trial testimony. Sellers alleged that this "newly discovered" evidence provided him a basis for a new trial regarding his convictions for Counts 3, 4 and 5. After holding a hearing, the district court denied the motion relying on United States v. Wallace, 528 F.2d 863 (4th Cir. 1976). We have reviewed the record and arguments on appeal, and do not find that the district court abused its discretion in denying the motion. See United States v. Roberts, 262 F.3d 286, 293 (4th Cir. 2001), cert. denied, 535 U.S. 991 (2002). Accordingly, 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