

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4405

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

EDWARD BROWN HOLLINS, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, Chief District Judge. (CR-03-49)

Submitted: October 13, 2004

Decided: October 27, 2004

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

Dismissed by unpublished per curiam opinion.

Jonathan Fittro, Clarksburg, 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Unpublished opinions are not binding precedent in this circuit.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:

Edward Brown Hollins, Jr., appeals his eighty-four-month sentence imposed after he pled guilty to aiding and abetting the distribution of .35 grams of crack cocaine, in violation of 21 U.S.C.A. § 841(a)(1), (b)(1)(C) (West 1999 & Supp. 2004), and 18 U.S.C. § 2 (2000). We dismiss the appeal.

Hollins contends that, because his criminal history category overstated the seriousness of his prior crimes, the district court erred in denying his motion for a downward departure. "We are not permitted to review a district court's refusal to depart downward from the Sentencing Guidelines unless the district court was under the mistaken impression that it lacked the authority to depart." United States v. Shaw, 313 F.3d 219, 222 (4th Cir. 2002) (internal quotation marks and citation omitted). Our review of the record convinces us that the district court was aware of its authority to depart but declined to do so because the facts did not warrant a departure.

Accordingly, we dismiss the appeal. 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.

DISMISSED