

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4659

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ADAM SMITH,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. David A. Faber, Chief District Judge. (CR-04-60)

Submitted: March 18, 2005

Decided: April 22, 2005

Before MOTZ, KING, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Mary Lou Newberger, Federal Public Defender, George H. Lancaster, Jr., Assistant Federal Public Defender, Jonathan D. Byrne, Charleston, West Virginia, for Appellant. Kasey Warner, United States Attorney, Miller A. Bushong III, Assistant United States Attorney, Beckley, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Pursuant to a plea agreement, Adam Smith pled guilty to aiding and abetting the possession with intent to distribute heroin and was sentenced to fifteen months of imprisonment and three years of supervised release. Thereafter, the district court alternatively gave Smith the same sentence without considering the Federal Sentencing Guidelines.

On appeal, Smith objects to the imposition of his alternative sentence. Smith, however, does not challenge the propriety of his Guideline sentence; thus, any error in his alternative sentence is moot. Accordingly, we affirm Smith's 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