

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-4929**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TERRY JACKSON BENNETT,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., Chief District Judge. (3:04-cr-00315)

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Submitted: June 15, 2007

Decided: July 10, 2007

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Before WILLIAMS, Chief Judge, TRAXLER, Circuit Judge, and HAMILTON, Senior Circuit Judge.

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Dismissed in part and affirmed in part by unpublished per curiam opinion.

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Johnny E. Watson, Sr., Columbia, South Carolina, for Appellant. Amy Elizabeth Ray, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Terry Jackson Bennett appeals his conviction and 235-month sentence following his guilty plea, pursuant to a plea agreement, to one count of assaulting, resisting or impeding an officer in violation of 18 U.S.C. §§ 111(a), (b) (West 1999 & Supp. 2006), and one count of possession with intent to distribute cocaine base in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B) (West 1999 & Supp. 2006). The Government filed a motion to dismiss based upon the waiver of appellate rights to which Bennett agreed as a part of his plea agreement.

We conclude that Bennett's appellate waiver is valid and encompasses all issues raised on appeal except his claim of ineffective assistance of counsel. We have reviewed that claim and determine that it does not "conclusively appear" on the record that counsel was ineffective. See United States v. James, 337 F.3d 387, 391 (4th Cir. 2003). Such a claim is more properly raised in a proceeding under 28 U.S.C. § 2255 (2000). Accordingly, we grant the Government's motion to dismiss with respect to issues covered by the waiver, deny the motion with respect to the ineffective assistance claim, and affirm as to the ineffective assistance of counsel claim. We also deny Bennett's motion to substitute counsel. 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 IN PART, AFFIRMED IN PART