

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4144

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM JOHN CLARK,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Elkins. Robert E. Maxwell, Senior District Judge. (2:05-cr-00044-REM)

Submitted: August 30, 2007

Decided: September 6, 2007

Before MICHAEL, KING, and SHEDD, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Brian J. Kornbrath, Federal Public Defender, Clarksburg, West Virginia, for Appellant. Sharon L. Potter, United States Attorney, Shawn Angus Morgan, Assistant United States Attorney, Clarksburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William John Clark pled guilty to possession of a firearm by a convicted felon, 18 U.S.C. § 922(g)(1) (2000). In sentencing him, the district court departed upward from criminal history category III to category VI under U.S. Sentencing Guidelines Manual § 4A1.3, p.s. (2006), and imposed a sentence of seventy-seven months imprisonment. Clark appeals his sentence, arguing that the sentence is unreasonable because the district court failed to explain why category IV or V was not sufficient. We conclude that the decision to depart was reasonable, but agree that the district court failed to explain adequately the extent of the departure.

The court departed based on Clark's lengthy criminal history, which included offenses not counted because of their age, several lenient sentences for serious offenses, and many charges disposed of through a diversionary disposition. A departure sentence is reviewed for reasonableness, both with respect to the decision to depart and the extent of the departure. United States v. Hernandez-Villanueva, 473 F.3d 118, 123 (4th Cir. 2007). Here, the district court adequately stated its reasons for departing. However, the court failed to follow the incremental approach required under United States v. Rusher, 966 F.2d 868, 884 (4th Cir. 1992).

We therefore vacate the sentence and remand for resentencing. On remand, the district court should explain why

categories IV and V are inadequate. 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.

VACATED AND REMANDED