

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4477

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN ELLERBE, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the District of
South Carolina, at Florence. Terry L. Wooten, District Judge.
(4:06-cr-00685-TLW)

Submitted: August 8, 2008

Decided: August 27, 2008

Before WILKINSON, MICHAEL, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James T. McBratney, Jr., MCBRATNEY LAW FIRM, P.A., Florence, South
Carolina, for Appellant. Reginald I. Lloyd, United States
Attorney, Columbia, South Carolina; William E. Day, II, Carrie A.
Fisher, Assistant United States Attorneys, Florence, South
Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Ellerbe pled guilty, pursuant to a written plea agreement, to theft by aiding and abetting a bank employee, in violation of 18 U.S.C. §§ 2, 656 (2000), and knowingly making a false statement to a bank in connection with an application for an automobile loan, in violation of 18 U.S.C. § 1014 (2000). The district court sentenced Ellerbe to twenty-eight months imprisonment and ordered him to pay \$70,798.94 in restitution, payable in monthly payments of \$1200, beginning upon his release from prison.

Ellerbe appeals, claiming that the district court failed to adequately consider his ability to pay when it determined the restitution payment schedule, as required by 18 U.S.C. § 3664(f)(2) (2000). Because he did not object at sentencing, Ellerbe's claim is reviewed for plain error. See United States v. Olano, 507 U.S. 725, 732-34 (1993); United States v. Hughes, 401 F.3d 540, 547 (4th Cir. 2005). Because the record establishes that the district court adequately considered the factors as required under § 3664(f)(2), we conclude that Ellerbe cannot show error, let alone plain error, in the district court's restitution order. See United States v. Karam, 201 F.3d 320, 330 (4th Cir. 2000) (district court's adoption of presentence report that contained sufficient facts to support restitution order avoided plain error). Accordingly, we affirm. We dispense with oral argument because the facts and legal

contentions are adequately addressed in the materials before the court and argument would not aid the decisional process.

AFFIRMED