

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4601

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

FREDDIE EVANS, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Bluefield. David A. Faber, Chief District Judge. (1:06-cr-00165-1)

Submitted: July 31, 2008

Decided: August 20, 2008

Before WILKINSON, TRAXLER, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

S. Mason Preston, PRESTON & WEESE, L.C., Lewisburg, West Virginia, for Appellant. Charles T. Miller, 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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Freddie Evans, Jr., pled guilty, pursuant to a plea agreement, to one count of conspiracy to distribute five kilograms or more of cocaine and fifty or more grams of cocaine base, in violation of 21 U.S.C. § 846 (2000) ("Count One"); and to one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h) (2000) ("Count Two"). The district court sentenced Evans to 288 months' imprisonment for Count One, to run concurrently with a term of 240 months' imprisonment for Count Two. Evans now appeals the district court's judgment, challenging only his sentence. For the following reasons, we affirm.

On appeal, Evans essentially argues that the district court erred in denying his motion for a downward departure, pursuant to U.S. Sentencing Guidelines Manual § 4A1.3 (2006), on the basis that his criminal history category over-represented the seriousness of his criminal history. However, a district court's failure to grant a downward departure is not reviewable unless the court was under the mistaken impression that it lacked the authority to depart. United States v. Brewer, 520 F.3d 367, 371 (4th Cir. 2008). Here, the district court clearly understood its authority to depart. Accordingly, this claim is not cognizable on appeal.

We affirm the district court's judgment. 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