

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4780

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC SCOTT BARKER,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, District Judge. (1:04-cr-00068-IMK-1)

Submitted: April 8, 2009

Decided: April 20, 2009

Before MOTZ, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.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:

Eric Scott Barker appeals the district court's amended judgment imposing an eighteen-month sentence for violating the terms of his supervised release that is to run consecutively to another federal sentence. Barker claims the court misunderstood U.S. Sentencing Guidelines Manual § 7B1.3(f) (policy statement) to require the court to impose a consecutive sentence instead of a concurrent one. We find no error and affirm.

In United States v. Davis, 53 F.3d 638, 640-41 n.9 (4th Cir. 1995), this court stated that the Chapter Seven policy statements concerning revocation of supervised release are not mandatory. See also United States v. Contreras-Martinez, 409 F.3d 1236, 1241 (10th Cir. 2005) (despite "seemingly mandatory language," USSG § 7B1.3(f) "is merely an advisory policy statement"). We find the record clearly shows that when the district court entered the amended judgment and reimposed the consecutive eighteen-month sentence it knew it had the discretion to make the determination as to how the sentence was to run in relation to the other federal sentence and it was not bound by USSG § 7B1.3(f).

Accordingly, we affirm the district court's amended 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