

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4986

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHAD HOWARD PERSON,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas David Schroeder, District Judge. (1:08-cr-00217-TDS-1)

Submitted: June 1, 2010

Decided: June 4, 2010

Before GREGORY, SHEDD, and KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Patrick M. Mincey, James R. Van Camp, VAN CAMP, MEACHAM & NEWMAN, PLLC, Pinehurst, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Terry M. Meinecke, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Chad Howard Person pled guilty, pursuant to a written plea agreement, to one count of distribution of 12.5 grams of crack cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B) (2006), and was sentenced to the statutory minimum of 120 months imprisonment. Person appeals, challenging the mandatory minimum sentence imposed by the district court.

Because the Government did not move for a downward departure to reflect substantial assistance, the district court had no authority to depart below the mandatory minimum. 18 U.S.C. § 3553(e); Melendez v. United States, 518 U.S. 120, 125-26 (1996). See also United States v. Robinson, 404 F.3d 850, 862 (4th Cir. 2005) (“[United States v. Booker, 543 U.S. 220 (2005)] did nothing to alter the rule that judges cannot depart below a statutorily provided minimum sentence.”). And, contrary to Person’s assertion, the mandatory minimum sentence does not violate the Eighth Amendment. See United States v. Thomas, 900 F.2d 37 (4th Cir. 1990) (noting that Eighth Amendment review applies only to sentences of death or life without parole). Because a panel of this court may not overrule the precedent set by a prior panel of this court, we reject Person’s argument. Mentavlos v. Anderson, 249 F.3d 301, 312 n. 4 (4th Cir. 2001).

Therefore, we affirm Person’s sentence. 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