

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4382

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STEPHEN JAMES MILLS,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, Chief District Judge. (2:97-cr-00815-DCN-1)

Submitted: March 31, 2011

Decided: April 28, 2011

Before MOTZ, KING, and DAVIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

T. Kirk Truslow, TRUSLOW LAW FIRM, LLC, North Myrtle Beach, South Carolina, for Appellant. William N. Nettles, United States Attorney, Sean Kittrell, Assistant United States Attorney, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Stephen James Mills appeals the district court's amended judgment modifying the terms of repayment for his restitution. Mills contends that (1) his waiver of appearance was not knowing or voluntary and he should have been present at resentencing, and (2) the sentence was procedurally unreasonable. We affirm.

We conclude that the district court was without jurisdiction to resentence Mills except to the extent that it granted Mills' 28 U.S.C. § 2241 (2006) habeas corpus petition and directed that restitution be modified. See 18 U.S.C. § 3582(c) (2006); see Timms v. Johns, 627 F.3d 525, 530 (4th Cir. 2010) (district court's authority under 28 U.S.C. § 2241 is not without limits). We further conclude that given Mills' signed statement waiving his right to be present at resentencing and that the court granted him the relief he sought in his § 2241 petition, we find no plain error regarding his absence. See United States v. Rhodes, 32 F.3d 867, 874 (4th Cir. 1994) (stating standard of review).

We affirm the 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