

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6963

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ULYSSES MCFARLIN, 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-00207-TLW-1)

Submitted: February 14, 2011

Decided: March 11, 2011

Before NIEMEYER, KING, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Ulysses McFarlin, Jr., Appellant Pro Se. Arthur Bradley Parham, Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ulysses McFarlin, Jr., appeals from the district court's order granting the Government's Fed. R. Crim. P. 35(b) motion for reduction of sentence and reducing McFarlin's sentence from 212 months in prison to 168 months based upon McFarlin's assistance. McFarlin asserts that the district court erred by considering his prior substantial assistance departure and by ignoring the Government's recommendation. We affirm.

While the sentencing court may not grant or augment a Rule 35(b) reduction based on factors other than assistance, it may consider other factors, including prior sentencing reductions, to limit the departure. See United States v. Doe, 351 F.3d 929, 932-33 (9th Cir. 2003). In addition, the district court was not bound by the Government's recommendations. See United States v. Grant, ___ F.3d ___, 2011 WL 71475, *10 (6th Cir. Jan. 11, 2011). As such, even accepting the truth of McFarlin's allegations as to the district court's statements at the Rule 35(b) hearing, his claims of error are without merit.

Accordingly, we affirm the district court's order and deny McFarlin's motion for preparation of a transcript at Government expense. 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