

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 95-5923

WADDELL EUGENE CALDWELL,

Defendant-Appellant.

Appeal from the United States District Court  
for the Middle District of North Carolina, at Winston-Salem.  
N. Carlton Tilley, Jr., District Judge.  
(CR-95-157)

Submitted: August 27, 1996

Decided: November 13, 1996

Before MURNAGHAN, NIEMEYER, and HAMILTON,  
Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

William E. Martin, Federal Public Defender, Gregory Davis, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Walter C. Holton, Jr., United States Attorney, John W. Stone, Jr., Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

### PER CURIAM:

Waddell Eugene Caldwell appeals from the sentence imposed by the district court after pleading guilty to attempted armed bank robbery in violation of 18 U.S.C.A. § 2113(a) (West Supp. 1996). We affirm.

Caldwell argues that the district court erred in not applying United States Sentencing Commission, Guidelines Manual, § 2X1.1(b)(1) (Nov. 1995), which provides for a three level decrease "unless the defendant completed all the acts the defendant believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant's control." At Caldwell's sentencing hearing the district court refused to apply U.S.S.G. § 2X1.1(b)(1) because it determined that Caldwell had completed all the acts he believed necessary to complete the bank robbery and most likely left the bank before completing the robbery because of apprehension of being detected and/or arrested. Where the district court's decision to make or not make an adjustment is primarily a factual determination this Court applies the clearly erroneous standard of review. United States v. Daughtrey, 874 F.2d 213, 217 (4th Cir. 1989). Upon reviewing the record, we find that the district court's determination was not clearly erroneous. Accordingly, we affirm.

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