

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 96-4047

OLIN D. THOMPSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of North Carolina, at Charlotte.
Graham C. Mullen, Chief District Judge.
(CR-92-296)

Submitted: September 28, 1999

Decided: October 12, 1999

Before WILLIAMS, MOTZ, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Kenneth P. Andresen, Charlotte, North Carolina, for Appellant. Mark
T. Calloway, United States Attorney, Brian Lee Whisler, Assistant
United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Appellant Olin Thompson appeals his conviction and sentence for conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C.A. § 846 (West Supp. 1999). On appeal, he argues that the trial court made numerous erroneous rulings resulting in reversible cumulative error, that sufficient evidence did not exist to support his conviction, and that the court erred in failing to depart downward based upon an overstated criminal history. Finding no error, we affirm.

We find that the court did not err in admitting the contested testimony. See United States v. D'Anjou, 16 F.3d 604, 610 (4th Cir. 1994). We find that the testimony was relevant and not unduly prejudicial. See Fed. R. Evid. 401, 403. In addition, Internal Revenue Service Agent Smith's testimony was relevant to unexplained wealth and therefore admissible. See United States v. Grandison, 783 F.2d 1152, 1156 (4th Cir. 1986). Clinton Bates' testimony was proper under Fed. R. Evid. 801(d)(2)(E). We also find that the evidence was sufficient to support the conviction. See United States v. Glasser, 315 U.S. 60, 80 (1942). Finally, we find that the district court knew that it had the authority to depart and chose not to do so; therefore the decision is not subject to review. See United States v. Bayerle, 898 F.2d 28, 30-31 (4th Cir. 1990).

We therefore affirm the 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