

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 96-4461

MICHAEL ROBINSON,

Defendant-Appellant.

Appeal from the United States District Court  
for the Eastern District of Virginia, at Richmond.  
Richard L. Williams, Senior District Judge.  
(CR-93-24)

Submitted: April 15, 1997

Decided: April 29, 1997

Before HALL, WILKINS, and NIEMEYER, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

Elizabeth Dashiell Scher, MORCHOWER, LUXTON & WHALEY,  
Richmond, Virginia, for Appellant. Helen F. Fahey, United States  
Attorney, N. George Metcalf, Assistant United States Attorney, Sean  
P. Byrne, Student Intern, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

## OPINION

PER CURIAM:

Appellant Michael Robinson was convicted of drug and firearms offenses, including using a firearm during and in relation to a drug trafficking offense in violation of 18 U.S.C. § 924(c) (1994), and this court affirmed his convictions and sentence. See United States v. Robinson, 1994 WL 258500 (4th Cir. June 14, 1994) (No. 93-5781) (unpublished). Robinson subsequently filed a motion for relief pursuant to 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997) and Bailey v. United States, \_\_\_ U.S. \_\_\_, 64 U.S.L.W. 4039 (U.S. Dec. 6, 1995) (Nos. 94-7448, 94-7492). The district court granted Robinson's motion as to his Bailey claim and vacated only the § 924(c) conviction. During the rehearing on sentencing, however, the district court enhanced Robinson's sentence for the remaining drug convictions pursuant to USSG § 2D1.1\* for possession of a firearm. On appeal, Robinson challenges whether the district court can resentence a defendant to an enhanced prison term pursuant to USSG § 2D1.1 after he has successfully challenged his sentence in a § 2255 motion in which he raised a Bailey claim. Finding no error, we affirm.

This issue was recently decided against Robinson in United States v. Hillary, 106 F.3d 1170 (4th Cir. 1997), in which this court held that the district court had jurisdiction to resentence a defendant on a surviving drug conviction after the defendant was granted relief from his § 924(c) conviction in light of Bailey. We had previously ruled that resentencing was appropriate in cases where the successful Bailey claim was raised on direct appeal. See United States v. Hawthorne, 94 F.3d 118, 122 (4th Cir. 1996). The decision in Hillary applied this same rule to cases where the successful Bailey claim was raised in a collateral attack.

We therefore affirm the order of the district court. Robinson's motion to amend is denied. We dispense with oral argument because the facts and legal contentions are adequately presented in the mate-

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\*United States Sentencing Commission, Guidelines Manual (Nov. 1995).

rial before the court and argument would not aid the decisional process.

AFFIRMED