

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-4684

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MARK D. POLEN,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., Chief District Judge. (CR-96-9)

Submitted: July 8, 1997

Decided: September 18, 1997

Before WIDENER, WILKINS, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

William C. Gallagher, CASSIDY, MYERS, COGAN, VOEGELIN & TENNANT, L.C., Wheeling, West Virginia, for Appellant. William D. Wilmoth, United States Attorney, Lisa Grimes Johnston, Assistant United States Attorney, Davis S. Kris, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant Mark Polen was convicted pursuant to his guilty plea of one count of willful failure to pay child support in violation of 18 U.S.C. § 228 (1994).^{*} On appeal, he challenges whether § 228 lies within Congress' constitutional power to regulate activities affecting commerce. Finding no error, we affirm.

Polen and his wife were divorced in 1984, and he was ordered to pay child support. Polen failed to make the required child support payments, and by the time of sentencing in the present case he owed approximately \$17,000. He filed a motion to dismiss the criminal information on the ground that § 228 is unconstitutional. The motion was denied, and Polen entered a conditional guilty plea, reserving his right to appeal the constitutionality of the statute.

This court recently held that § 228 does not exceed Congress' power under the Commerce Clause, nor does it violate the Tenth Amendment. See United States v. Johnson, 114 F.3d 476 (4th Cir. 1997). Accordingly, we affirm Polen's conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the material before the court and argument would not aid the decisional process.

AFFIRMED

^{*} Also known as the "Child Support Recovery Act."

