

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

No. 96-7465

NELSON HINES; SHAWN FENNER,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
J. Frederick Motz, Chief District Judge.
(CR-93-205-JFM, CA-96-1565-JFM, CA-96-1666-JFM)

Submitted: March 27, 1997

Decided: April 8, 1997

Before RUSSELL, LUTTIG, and MICHAEL,
Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Lynne A. Battaglia, United States Attorney, Bonnie S. Greenberg,
Assistant United States Attorney, Baltimore, Maryland, for Appellant.
James K. Bredar, Federal Public Defender, Denise C. Barrett, Assis-
tant Federal Public Defender, Baltimore, Maryland; Barbara Gold,
Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

The United States appeals two orders of the district court denying its requests to resentence Nelson Hines and Shawn Fenner on their surviving drug convictions after their convictions under 18 U.S.C. § 924(c) (1994) were vacated in light of Bailey v. United States, ___ U.S. ___, 64 U.S.L.W. 4039 (U.S. Dec. 6, 1995) (Nos. 94-7449/7492). The government conceded that the § 924(c) convictions should be vacated but requested resentencing in each case so that the district court might consider a two-level enhancement for possession of a weapon in connection with the drug offenses. See United States Sentencing Commission, Guidelines Manual § 2D1.1 (Nov. 1995). The district court held that it lacked jurisdiction under 28 U.S.C. § 2255 (1994) to resentence Hines and Fenner.

We recently considered the issue raised here and held that the district court has jurisdiction to resolve any issue which was not litigated and resolved at the original sentencing when the failure to litigate was directly caused by the error which is the subject of the § 2255 petition. See United States v. Hillary, ___ F.3d ___, No. 96-7463, 1997 WL 61398 (4th Cir. Feb. 14, 1997).

The judgment of the district court is therefore vacated, and the case is remanded with instructions to resentence Hines and Fenner. 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.

VACATED AND REMANDED