

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 99-4501

JOHN PEARSON, a/k/a JP,

Defendant-Appellant.

Appeal from the United States District Court  
for the Southern District of West Virginia, at Huntington.  
Robert C. Chambers, District Judge.  
(CR-99-15)

Submitted: November 18, 1999

Decided: November 30, 1999

Before WILKINS, HAMILTON, and LUTTIG, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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**COUNSEL**

George A. Mills, III, Huntington, West Virginia, for Appellant.  
Rebecca A. Betts, United States Attorney, Ray M. Shepard, Assistant  
United States Attorney, Huntington, West Virginia, 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Unpublished opinions are not binding precedent in this circuit.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:

John Pearson pled guilty to aiding and abetting the distribution of cocaine base (crack), see 21 U.S.C. § 841(a) (1994), and was sentenced as a career offender to a term of 151 months imprisonment. See U.S. Sentencing Guidelines Manual § 4B1.1 (1998). Pearson seeks to appeal the district court's decision not to depart below the career offender guideline range on the ground that it over-represented his criminal history. See USSG § 4A1.3, p.s. We dismiss.

A sentencing court's decision not to depart is not reviewable on appeal unless the decision is based on a perception that the court lacks authority to depart. See United States v. Hall, 977 F.2d 861, 863 (4th Cir. 1992); United States v. Bayerle, 898 F.2d 28, 31 (4th Cir. 1990). There is no doubt in this case that the court understood its authority to depart. The court simply decided that a departure was not warranted. To the extent that the court relied on our pre-Koon\* decision in United States v. Brown, 23 F.3d 839, 840-42 (4th Cir. 1994) (holding that a § 4A1.3 departure is not justified by the fact that a prior drug conviction involved a small amount of drugs), the court did not err. See United States v. Pearce, \_\_\_ F.3d \_\_\_, 1999 WL 710315, at \*10 (4th Cir. Sept. 13, 1999) (reaffirming holding in Brown).

We therefore dismiss the appeal for lack of jurisdiction. 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.

### DISMISSED

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\*Koon v. United States, 518 U.S. 81, 100 (1996).