

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-4848

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MARCUS HAWTHORNE BANKS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Senior District Judge. (CR-90-351-A)

Submitted: June 27, 2000

Decided: July 12, 2000

Before WIDENER, MURNAGHAN, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Mark J. Rochon, ROCHON, ROBERTS & STERN, Washington, D.C., for Appellant. Helen F. Fahey, United States Attorney, Richard M. Rolwing, Special Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Marcus Hawthorne Banks alleges that the district court erred by denying his motion to downwardly depart by imposing his sentences for possession with intent to distribute heroin and possession of heroin by a prisoner to be concurrently served with his previously imposed sentence. Because the district court concluded that even if it had authority to downwardly depart it was unwilling to do so, Banks cannot appeal the decision. See United States v. Brock, 108 F.3d 31, 33 (4th Cir. 1997); United States v. Bayerle, 898 F.2d 28, 30-31 (4th Cir. 1990). Accordingly, we dismiss the appeal. 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