

UNPUBLISHED

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

SHAWN DARNELL MASON,  
*Defendant-Appellant.*

No. 00-4174

Appeal from the United States District Court  
for the Western District of Virginia, at Charlottesville.  
James H. Michael, Jr., Senior District Judge.  
(CR-98-19)

Submitted: July 31, 2001

Decided: August 15, 2001

Before WILLIAMS, MICHAEL, and MOTZ, Circuit Judges.

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Affirmed in part and dismissed in part by unpublished per curiam opinion.

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**COUNSEL**

Margaret McLeod Cain, Charlottesville, Virginia, for Appellant. Ruth E. Plagenhoef, United States Attorney, Ray B. Fitzgerald, Jr., Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

**OPINION**

## PER CURIAM:

Shawn Darnell Mason appeals his conviction entered on his guilty plea to possession with intent to distribute crack cocaine in violation of 21 U.S.C. § 841(b)(1)(C) (1994), and a related firearms offense in violation of 18 U.S.C. § 924(c) (1994). In this appeal, Mason contends that his conviction deprived him of his right to testify at trial on his own behalf and that the evidence against him was insufficient to convict him of the firearms offense. *See Bailey v. United States*, 516 U.S. 137, 148 (1995). Mason also argues that the district court erred in failing to grant sua sponte a downward departure under USSG § 5K1.1. Finding no merit to Mason's contentions regarding his conviction and lacking the jurisdiction to review his claim that the district court should have departed downward, we affirm Mason's conviction and sentence and dismiss this appeal in part.

Mason's first contention, that he was somehow denied his right to testify, is completely foreclosed by his explicit waiver of that right during the thorough Fed. R. Crim. P. 11 colloquy conducted by the district court. Similarly, by pleading guilty, Mason relinquished his right to challenge the sufficiency of the evidence presented as a factual basis for his plea to the firearms charge. *United States v. Willis*, 992 F.2d 489, 490-91 (4th Cir. 1993). Finally, review of the district court's decision not to depart is unavailable in the circumstances presented by this appeal. *See Wade v. United States*, 504 U.S. 181, 185-86 (1992); *United States v. Edwards*, 188 F.3d 230, 238-39 (4th Cir. 1999), *cert. denied*, 528 U.S. 1130 (2000). That portion of the appeal will be dismissed.

Finding no reversible error, we affirm Mason's conviction and sentence. 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.

*AFFIRMED IN PART, DISMISSED IN PART*