

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROBERT EARL WARREN, JR.,
Defendant-Appellant.

No. 01-4904

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
William L. Osteen, District Judge.
(CR-01-100)

Submitted: July 22, 2003

Decided: August 22, 2003

Before WILLIAMS and GREGORY, Circuit Judges,
and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Urs R. Gsteiger, HORTON & GSTEIGER, P.L.L.C., Winston-Salem,
North Carolina, for Appellant. Anna Mills Wagoner, United States
Attorney, Robert A.J. Lang, Assistant United States Attorney,
Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Robert Earl Warren, Jr., appeals from the judgment of the district court convicting him of possession of heroin with the intent to distribute, possession of a firearm during the scope of drug trafficking, and possession of a firearm as a convicted felon, in violation of 18 U.S.C. §§ 922, 924 (2000), and 21 U.S.C. § 841 (2000). We affirm.

Through counsel, Warren first claims that the district court erred in denying his motion to suppress the evidence gathered from a stop of his vehicle. In seeking to reverse the district court's ruling, Warren challenges the factual findings made by the district court. We review this claim for clear error. *See United States v. Seidman*, 156 F.3d 542, 547 (4th Cir. 1998). Warren's own testimony regarding the probable cause for the stop of his vehicle was directly contradicted by the testimony of the involved police officer and, moreover, by Warren's other witnesses. Accordingly, Warren asks this court to overturn the credibility determinations of the district court. We decline to do so. *See United States v. Murray*, 65 F.3d 1161, 1169 (4th Cir. 1995) (reviewing credibility determination at pre-trial motion to suppress for clear error and according great deference to such findings). We therefore find that the district court did not err in denying the motion to suppress.

In his pro se supplemental brief, Warren asserts that the district court failed to comply with the colloquy requirement in regard to his prior conviction used for the purpose of enhancing his sentence. *See* 21 U.S.C. § 851(b) (2000). As this claim was not preserved in the district court, we review for plain error and find none. Warren's claim is foreclosed by our recent decision in *United States v. Ellis*, 326 F.3d 593, 598-99 (4th Cir. 2003).

We affirm the judgment of the district court and deny Warren's motion to withdraw counsel and proceed pro se. 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