

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TRACEY PINKNEY DANIELS, a/k/a
Tracey Pinkney,
Defendant-Appellant.

No. 03-4527

Appeal from the United States District Court
for the District of South Carolina, at Columbia.
Cameron M. Currie, District Judge.
(CR-02-217)

Submitted: December 3, 2003

Decided: December 31, 2003

Before WIDENER, WILLIAMS, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Lori S. Murray, LAW OFFICES OF LORI S. MURRAY, Columbia,
South Carolina, for Appellant. J. Strom Thurmond, Jr., United States
Attorney, William K. Witherspoon, Assistant United States Attorney,
Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Tracey Pinkney Daniels pled guilty to conspiracy to possess with intent to distribute controlled substances, in violation of 21 U.S.C. § 846 (2000). Daniels appeals her sentence of 262 months' imprisonment. We find no error and affirm.

Daniels asserts the district court erred in its failure to award her an adjustment for a mitigating role in the offense, *U.S. Sentencing Guidelines Manual* § 3B1.2 (2002). A defendant has the burden of showing by a preponderance of the evidence that she had a mitigating role in the offense. *United States v. Akinkoye*, 185 F.3d 192, 202 (4th Cir. 1999). A defendant may receive a four-level reduction for being a minimal participant if she is "plainly among the least culpable of those involved in the conduct of a group." USSG § 3B1.2(a), comment. (n.4). This level of culpability is shown by the defendant's "lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others" *Id.* A two-level reduction may be made when a defendant is a minor participant, that is, one who "is less culpable than most other participants, but whose role could not be described as minimal." USSG § 3B1.2(b), comment. (n.5). The "critical inquiry is thus not just whether the defendant has done fewer 'bad acts' than his codefendants, but whether the defendant's conduct is material or essential to committing the offense." *United States v. Pratt*, 239 F.3d 640, 646 (4th Cir. 2001) (internal quotation omitted). Role adjustments are determined on the basis of the defendant's relevant conduct. *United States v. Fells*, 920 F.2d 1179, 1183-84 (4th Cir. 1990). The district court's determination concerning the defendant's role in the offense is reviewed for clear error. *United States v. Love*, 134 F.3d 595, 606 (4th Cir. 1998). The district court found Daniels was not entitled to a mitigating role adjustment because she was involved in handling heroin, bundled money from drug proceeds, knew she was living among drugs and guns, paid rent

for a residence where drugs were manufactured with her acquiescence and large quantities of drugs were stored in her bedroom. We find no clear error in the district court's determination that Daniels was not a minimal or minor participant.

Daniels also contends that it was error when the Probation Officer first recommended an adjustment for a mitigating role and then revised the presentence report after Daniels' objections pointed out that the base offense level was properly reduced to thirty, pursuant to USSG § 2D1.1(a)(3). The district court, however, was not bound by the Probation Officer's recommendation in the presentence report. *United States v. Gordon*, 895 F.2d 932, 936 (4th Cir. 1990).

Accordingly, we affirm Daniels' 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