

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-5016

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SEAN AARON MIMS, a/k/a Sean Aaron Mimms,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:07-cr-00150-REP)

Submitted: August 14, 2008

Decided: August 19, 2008

Before MICHAEL, Circuit Judge, and WILKINS and HAMILTON, Senior Circuit Judges.

Dismissed by unpublished per curiam opinion.

Craig W. Sampson, Sr., BARNES & DIEHL, PC, Chesterfield, Virginia, for Appellant. Samuel Eugene Fishel, IV, Special Assistant United States Attorney, Elizabeth Wu, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sean Aaron Mims pled guilty to two counts of possession of child pornography, 18 U.S.C.A. § 2252A(a)(5)(B) (West 2000 & Supp. 2008), and was sentenced to the statutory maximum term of 120 months on each count, with the sentences partially concurrent and partially consecutive, for a total sentence of 168 months imprisonment. Under the terms of his plea agreement, Mims waived his right to appeal any sentence within the statutory maximum "on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever." Mims now seeks to contest the calculation of his advisory guideline range, challenging a five-level enhancement under U.S. Sentencing Guidelines Manual § 2G2.2(b)(5) (2006), on the ground that the conduct underlying the enhancement was a separate crime. The government has moved to dismiss the appeal based on the waiver of appeal rights.

Mims concedes that he waived his right to appeal and that the waiver was knowing and voluntary. See United States v. Brown, 232 F.3d 399, 402-06 (4th Cir. 2000). He contends that the issue he seeks to raise is not within the scope of the waiver. We disagree.

We therefore grant the government's motion to dismiss and 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