

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 96-4045

RAYMOND LEE PRAYEAR, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of West Virginia, at Wheeling.
Frederick P. Stamp, Jr., Chief District Judge.
(CR-94-102)

Submitted: August 22, 1996

Decided: September 12, 1996

Before RUSSELL, HALL, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Howard G. Higgins, Jr., Morgantown, West Virginia, for Appellant.
William D. Wilmoth, United States Attorney, Sam G. Nazzaro, Assis-
tant United States Attorney, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Raymond Lee Prayear, Jr., pled guilty to conspiracy to possess crack cocaine with intent to distribute, 21 U.S.C.A. § 846 (West Supp. 1996). He was sentenced to a term of 151 months imprisonment. He appeals his sentence on two grounds which were not raised in the district court and are without merit. Finding no plain error, we affirm his sentence.

Prayear first contends that his sentence is disproportionate to the gravity of his offense and thus violates the Eighth Amendment. Because his sentence is less than life without parole, an extended proportionality review is not necessary. United States v. Thomas, 900 F.2d 37, 39 (4th Cir. 1990). We have no difficulty in finding that Prayear's sentence is not disproportionate to his offense.

Next, Prayear argues that the 100-to-1 statutory sentencing ratio for cocaine and crack offenses violates the Equal Protection Clause of the Fifth Amendment because of its disparate impact on black defendants. This claim has been considered and rejected before. United States v. Fisher, 58 F.3d 96, 99 (4th Cir.), cert. denied, ___ U.S. ___, 64 U.S.L.W. 3270 (U.S. Oct. 10, 1995) (No. 95-5923).

The sentence is accordingly affirmed. 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