

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-6168

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ST. MATTHEW TROY EVANS,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, Chief District Judge. (CR-92-116-JFM, CA-95-3123-JFM)

Submitted: October 29, 1996

Decided: November 15, 1996

Before MURNAGHAN, WILLIAMS, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

St. Matthew Troy Evans, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

St. Matthew Troy Evans appeals the denial of his motion filed pursuant to 28 U.S.C. § 2255 (1994), amended by Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214. In his motion, Evans claimed that his attorney was ineffective for failing to note an appeal following sentencing on cocaine conspiracy charges. We affirm.

In his plea agreement, Evans waived his appellate rights under 18 U.S.C. § 3742 (1994), reserving only his right to appeal an upward departure from the guideline range. See 18 U.S.C. § 3742(a)(3). In the subject case, the district court stated at sentencing that it was departing downward from Evans' guideline range of 87-108 months. Evans received a three-month departure and was sentenced to 84 months in prison.

Evans' waiver was valid and enforceable. His claim that his attorney was ineffective for failing to note an appeal is without merit because Evans expressly waived his right to appeal anything other than an upward departure and, in this case, there was no upward departure.

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. Leave to proceed in forma pauperis is granted.

AFFIRMED