

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-4065

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ALFRED TITUS SHULER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, District Judge. (CR-96-13-7-BR)

Submitted: August 28, 1997

Decided: September 12, 1997

Before WILKINS, WILLIAMS, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Terrence Lee Taylor, RICHARD L. CANNON, III, Greenville, North Carolina, for Appellant. Janice McKenzie Cole, United States Attorney, Anne M. Hayes, Assistant United States Attorney, Peter W. Kellen, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Alfred Titus Shuler was convicted of four counts of possession of crack cocaine with intent to distribute in violation of 21 U.S.C. § 841 (West 1981 & Supp. 1997). He was sentenced as a career offender to a term of 262 months imprisonment. United States Sentencing Commission, Guidelines Manual, 4B1.1 (Nov. 1996). On appeal, he asserts that the district court clearly erred in denying his motion for a downward departure from the career offender guideline range.

A district court's discretionary decision not to depart is not subject to appellate review. See United States v. Bayerle, 898 F.2d 28, 31 (4th Cir. 1990). Consequently, we lack jurisdiction to review the issue raised by Shuler. Id.

We therefore 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