

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6059

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LINWOOD GERALD KENNY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, District Judge. (3:01-cr-00185-FDW-1)

Submitted: August 21, 2008

Decided: August 26, 2008

Before WILLIAMS, Chief Judge, and KING and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Linwood Gerald Kenny, Appellant Pro Se. Karen S. Marston, OFFICE OF THE UNITED STATES ATTORNEY, Gretchen C.F. Shappert, United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Linwood Gerald Kenny appeals the district court's order construing his motion for an evidentiary hearing as a criminal motion contesting the Government's failure to file a Fed. R. Crim. P. 35 motion. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. United States v. Kenny, No. 3:01-cr-00185-FDW-1 (W.D.N.C. Nov. 26, 2007). 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