

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-4043

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CORNELIUS KEITH SMITH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. Louise W. Flanagan, Chief District Judge. (7:10-cr-00076-FL-1)

Submitted: September 29, 2011

Decided: October 18, 2011

Before KEENAN and DIAZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

J. Merritt Wagoner, SULLIVAN & WAGONER LLP, Wilmington, North Carolina, for Appellant. Jennifer P. May-Parker, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cornelius Keith Smith appeals his sentence of 327 months' imprisonment for possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1) (2006) and use and carry of a firearm during and in relation to, and possession in furtherance of, a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1) (2006).

Currently pending before this court is the Government's motion to vacate Smith's sentence in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc), and to remand the case to the district court for resentencing. Smith requests that we grant the Government's motion. We grant the motion. Smith brought no challenge to his conviction in his opening brief. Accordingly, the district court's judgment is affirmed as to the conviction, vacated as to the sentence, and the case is remanded for resentencing.

AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED