

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-4345

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ZEB ANTHONY HENSON,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of Virginia, at Lynchburg. Norman K. Moon, Senior
District Judge. (6:10-cr-00013-nkm-1)

Submitted: August 25, 2011

Decided: August 29, 2011

Before MOTZ, DUNCAN, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Larry W. Shelton, Federal Public Defender, Christine Madeleine
Lee, Research and Writing Attorney, OFFICE OF THE FEDERAL PUBLIC
DEFENDER, Roanoke, Virginia, for Appellant. Timothy J. Heaphy,
United States Attorney, Jean B. Hudson, Assistant United States
Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Zeb Anthony Henson pled guilty to possession with intent to distribute of five grams or more of actual methamphetamine, 21 U.S.C. § 841(a)(1) (2006). He received a sentence of eighty-four months' imprisonment. Henson appeals his sentence, contending that the district court abused its discretion when it denied his request for a downward departure under U.S. Sentencing Guidelines Manual § 4A1.3 (2010), on the ground that his criminal history category substantially over-represented the seriousness of his criminal history. For the reasons explained below, we dismiss the appeal.

The district court has the discretion to depart downward "[i]f reliable information indicates that the defendant's criminal history category substantial over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes." U.S. Sentencing Guidelines Manual § 4A1.3(b)(1) (2010). However, "[w]e lack the authority to review a sentencing court's denial of a downward departure unless the court failed to understand its authority to do so." United States v. Brewer, 520 F.3d 367, 371 (4th Cir. 2008). Our review of the record discloses that the district court did not fail to recognize its authority to depart. Thus, Henson's claim is not reviewable on appeal.

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