

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4005

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK HARRIS,

Defendant - Appellant.

No. 08-4033

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARLA MUSICK,

Defendant - Appellant.

Appeals from the United States District Court for the Southern
District of West Virginia, at Beckley. Thomas E. Johnston,
District Judge. (5:07-cr-00006-1; 5:07-cr-00006-2)

Submitted: June 25, 2009

Decided: July 29, 2009

Before NIEMEYER, MICHAEL, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Jacqueline A. Hallinan, HALLINAN LAW OFFICES, PLLC, Charleston, West Virginia; Barron M. Helgoe, VICTOR VICTOR & HELGOE, LLP, Charleston, West Virginia, for Appellants. Charles T. Miller, United States Attorney, Miller Bushong, Assistant United States Attorney, Beckley, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A superseding indictment charged Derrick Harris and Carla Musick with various joint and individual drug offenses. Harris pled guilty to Count 6, possession with intent to distribute five grams or more of cocaine base, and Musick pled guilty to Count 4, possession with intent to distribute five grams or more of cocaine base. Harris was sentenced to 205 months of imprisonment and Musick to 96 months. Both defendants were sentenced within their respective advisory Sentencing Guidelines ranges. Their cases have been consolidated on appeal.

Harris alleges two issues. First, whether the district court clearly erred by denying his motion to withdraw his plea. Second, whether Harris lacked adequate assistance of counsel at sentencing. Musick's sole issue is whether the district court clearly erred by increasing her base offense level by two for possession of a weapon under U.S. Sentencing Guidelines Manual ("USSG") § 2D1.1(b)(1) (2007). For the reasons that follow, we affirm.

We find no merit to Harris' claims. First, we find no abuse of discretion in the district court's decision to deny Harris' motion to withdraw his guilty plea. United States v. Ubakanma, 215 F.3d 421, 424 (4th Cir. 2000) (stating review standard). The record reveals that the district court carefully

stepped through the six factors outlined in this court's opinion in United States v. Moore, 931 F.2d 245, 248 (4th Cir. 1991), in determining whether to grant the motion. Second, we find no cognizable claim of ineffective assistance of Harris' trial counsel in this direct appeal. United States v. James, 337 F.3d 387, 391 (4th Cir. 2003).

We review Musick's sentence under a deferential abuse-of-discretion standard. Gall v. United States, 552 U.S. 38, ___, 128 S. Ct. 586, 590 (2007). We find no procedural or substantive error in the district court's sentence. Id. at 597; United States v. Pauley, 511 F.3d 468, 473 (4th Cir. 2007). In particular, we find no clear error in the district court's decision that the USSG § 2D1.1(b)(1) enhancement was warranted. United States v. McAllister, 272 F.3d 228, 234 (4th Cir. 2001). Thus, this claim fails.

Accordingly, we affirm Harris' and Musick's convictions and sentences. 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