

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7723

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

COURTNEY ROSS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:02-cr-00347-HEH-1)

Submitted: March 26, 2009

Decided: April 22, 2009

Before NIEMEYER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Courtney Ross, Appellant Pro Se. Michael Calvin Moore, Michael Cornell Wallace, Assistant United States Attorneys, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Courtney Ross appeals from the district court's order denying his motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c) (2006). Because the district court, we assume inadvertently, entered its order prior to the date on which Ross's reply to the Government's response was due, we vacate the district court's order and remand for further proceedings.

On July 1, 2008, the district court directed the Government and the Probation Office to respond to Ross's motion by providing information about: (1) Ross's currently-projected date of release; (2) any educational or vocational training that he has received in prison; (3) any treatment for substance abuse or physical or mental health that he has received in prison; (4) his conduct after sentencing, including his compliance with the rules of the institution in which he has been incarcerated; and (5) any relevant public safety considerations. The district court directed Ross to reply to the Government's response within thirty days of the date it was filed in the event that the Government opposed his motion.

The Government's response acknowledged that Ross is eligible for a sentence reduction under U.S. Sentencing Guidelines Manual ("USSG") § 2D1.1 (2007) (Amendment 706); USSG § 1B1.10(c) (Mar. 3, 2008). However, the Government opposed Ross's motion on the basis of his criminal record, which

"includes numerous instances of violent conduct," regardless of any mitigating evidence that might be presented regarding his behavior and progress while incarcerated. The Government filed its response on August 1, 2008. On August 13, 2008, the district court denied Ross's motion, finding that while Amendment 706 made him eligible for a sentence reduction, the court in its discretion would not grant him that relief because his long and violent criminal history, including attempted robbery, abduction, malicious wounding, and use of a firearm in the commission of a felony, presents a threat to public safety. The court's order did not indicate that it was knowingly ruling on Ross's motion prior to the date on which his reply to the Government's response was due.

Although we express no opinion regarding the district court's evaluation of the merits of Ross's motion, the court should provide Ross the opportunity accorded him to file a reply that was set out in its July 1, 2008 order directing a response and a reply. We accordingly vacate the district court's order and remand for further proceedings. 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.

VACATED AND REMANDED