

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4540

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES MONDRNEA CARROWAY,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. R. Bryan Harwell, District Judge. (4:08-cr-01075-RBH-1)

Submitted: March 29, 2010

Decided: May 11, 2010

Before MICHAEL* and DAVIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Michael A. Meetze, Assistant Federal Public Defender, Florence, South Carolina, for Appellant. W. Walter Wilkins, United States Attorney, Alfred W. Bethea, Jr., Assistant United States Attorney, Florence, South Carolina, for Appellee.

* Judge Michael was a member of the original panel but did not participate in this decision. This opinion is filed by a quorum of the panel pursuant to 28 U.S.C. § 46(d).

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Carroway pled guilty to possession with intent to distribute more than 50 grams of cocaine base ("crack") in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) (2006). The district court denied Carroway's motion to amend the indictment and the guilty plea, and sentenced him to 240 months in prison, the statutory mandatory minimum. Carroway appeals. We affirm.

Carroway asserts that the statutory sentencing disparity between crack and powder cocaine is unconstitutional. He points to the fact that the Department of Justice and Congress are considering changes to federal sentencing law as evidence of the current scheme's constitutional deficiency. We repeatedly have rejected claims that the sentencing disparity between powder cocaine and crack offenses violates either equal protection or due process. See, e.g., United States v. Perkins, 108 F.3d 512, 518-19 & n.34 (4th Cir. 1997); United States v. Burgos, 94 F.3d 849, 876-77 (4th Cir. 1996) (en banc). To the extent that Carroway seeks to have us reconsider these decisions, a panel of this court cannot overrule the decision of a prior panel. United States v. Simms, 441 F.3d 313, 318 (4th Cir. 2006).

Accordingly, although we deny the Government's motion for summary affirmance, 4th Cir. R. 27(f), we affirm the district court's judgment. 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