

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-5206

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVON DONNELL REID,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at New Bern. Malcolm J. Howard, District Judge. (CR-04-86)

Submitted: October 31, 2006

Decided: November 13, 2006

Before WILLIAMS, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, Devon L. Donahue, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. George E. B. Holding, Acting United States Attorney, Anne M. Hayes, Christine Witcover Dean, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Davon Donnell Reid, pursuant to a written plea agreement, pled guilty to one count of conspiracy to distribute more than fifty grams of cocaine base and a quantity of marijuana, in violation of 21 U.S.C. § 846 (2000). Reid was sentenced to 168 months' imprisonment. We affirm Reid's sentence.

On appeal, Reid contends the district court erred by treating the guidelines as mandatory in violation of United States v. Booker, 543 U.S. 220 (2005). As Reid raises this issue for the first time on appeal, review is for plain error. See United States v. White, 405 F.3d 208, 215 (4th Cir.), cert. denied, 126 S. Ct. 668 (2005). To establish plain error, Reid must show that an error occurred, that the error was plain, and that the error affected his substantial rights. Id. Because the district court clearly indicated that it treated the guidelines as advisory and rendered its sentence in conformity with Booker, we conclude Reid has failed to establish that the court plainly erred.

Accordingly, we affirm Reid's sentence. 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