

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4531

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHAWNTAY LAKEITH SWANN,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Senior District Judge. (1:06-cr-00443-WLO)

Submitted: October 14, 2008

Decided: October 16, 2008

Before KING, GREGORY, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James R. Saunders, HARRINGTON, SAUNDERS & JONES, P.A., Greenville, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, David P. Folmar, Jr., Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shawntay Lakeith Swann appeals his life sentence entered pursuant to his convictions for distribution of crack cocaine. The Government filed two Informations of Prior Conviction, one prior to voire dire of the jury and one after voire dire had begun but prior to the jury being sworn. Swann asserts that he did not receive timely notice of the second conviction, as required by 21 U.S.C. § 851 (2000). However, because this issue was not raised at trial, it is reviewable only for plain error. United States v. Beasley, 495 F.3d 142, 148 (4th Cir. 2007), cert. denied, 128 S. Ct. 1471 (2008). Moreover, Swann's claim is foreclosed by our decision in Beasley that a district court that accepts an § 851 information after the jury was selected but before it was sworn has not plainly erred. Id. at 149-50. Accordingly, we affirm. We deny Swann's motion to file a pro se supplemental brief. 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