

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-5109

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK E. JOHNSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:06-cr-00523-REP-1)

Submitted: September 30, 2008

Decided: October 21, 2008

Before WILKINSON, MICHAEL, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael S. Nachmanoff, Federal Public Defender, Frances H. Pratt, Assistant Federal Public Defender, Alexandria, Virginia, for Appellant. Chuck Rosenberg, United States Attorney, Richard D. Cooke, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick E. Johnson pled guilty to two counts of possessing with intent to distribute cocaine base "crack" and to one count of possessing a firearm in furtherance of a drug trafficking crime under 18 U.S.C.A. § 924(c) (West Supp. 2008). Johnson was sentenced to 147 months of imprisonment: eighty-seven months each for the drug counts, to be served concurrently to each other, and sixty months on the firearm count, to be served consecutively to the drug counts. On appeal, Johnson's sole issue is that he did not knowingly and voluntarily plead guilty to the § 924(c) charge because the district court* failed to advise him of the nature of the offense and there was an insufficient factual basis to support the plea. For the reasons that follow, we affirm.

Because he failed to challenge the propriety of his plea colloquy in the district court, Johnson concedes we review the issue for plain error. United States v. Vonn, 535 U.S. 55, 58-59 (2002); United States v. Martinez, 277 F.3d 517, 527 (4th Cir. 2002). We find no reversible error as the record reveals that Johnson was informed about the nature of the § 924(c) offense, that there was a factual basis for the plea, and that

* Johnson's plea hearing was conducted by a magistrate judge based on his waiver of his right to proceed before a district judge for his Fed. R. Crim. P. 11 hearing.

he knowingly and voluntarily pled guilty to the offense. United States v. DeFusco, 949 F.2d 114, 116 (4th Cir. 1991); see United States v. Wilson, 81 F.3d 1300, 1307 (4th Cir 1996) ("The Court has repeatedly refused to script the Rule 11 colloquy, relying rather on the experience and wisdom of the district judges below.").

Accordingly, we affirm. 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