

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-5152

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BILLY BOWENS,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:07-cr-00078-1)

Submitted: June 19, 2008

Decided: June 23, 2008

Before WILKINSON, NIEMEYER, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

W. Michael Frazier, FRAZIER & OXLEY, L.C., Huntington, West Virginia, for Appellant. Charles T. Miller, United States Attorney, Monica L. Dillon, Assistant United States Attorney, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Billy Bowens pled guilty to possession of a firearm by a convicted felon, 18 U.S.C. § 922(g)(1) (2000), and was sentenced to a term of thirty-seven months imprisonment, the bottom of the guideline range established under the United States Sentencing Guidelines. Bowens seeks to appeal his sentence, contending that the district court committed a factual error when it determined that a variance sentence below the range was not warranted. We dismiss the appeal.

As part of his plea agreement, Bowens waived his right to appellate review of the reasonableness of a sentence within the guideline range. In this circuit, "[a] sentence within the proper Sentencing Guidelines range is presumptively reasonable." United States v. Allen, 491 F.3d 178, 193 (4th Cir. 2007); see Rita v. United States, 127 S. Ct. 2456, 2462-69 (2007) (upholding presumption of reasonableness for within-guidelines sentence). This presumption can only be rebutted by showing that the sentence is unreasonable when measured against the § 3553(a) factors. United States v. Montes-Pineda, 445 F.3d 375, 379 (4th Cir. 2006). By arguing that the court erred in rejecting his argument for a variance sentence below the advisory guideline range, Bowens is challenging the reasonableness of his within-guidelines sentence. We conclude that Bowens waived his right to appeal his sentence on this ground.

We therefore dismiss the appeal. 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.

DISMISSED