

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7471

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

IRA ST ANTHONY HUGGINS,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, District Judge. (2:04-cr-01098-PMD-1)

Submitted: March 14, 2008

Decided: March 27, 2008

Before WILKINSON, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Ira St Anthony Huggins, Appellant Pro Se. Alston Calhoun Badger, Jr., Assistant United States Attorney, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ira St Anthony Huggins appeals the district court's order denying his motion for reconsideration of the district court's order denying Huggins' motion for a new trial. We affirm.

Huggins sought a new trial based on newly discovered evidence. In order to warrant a new trial on this basis, Huggins must show that: (1) the evidence is newly discovered; (2) he used due diligence to discover the evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence would probably result in his acquittal at a new trial. United States v. Lofton, 233 F.3d 313, 318 (4th Cir. 2000). With these criteria in mind, we have reviewed the record and find that the district court did not abuse its discretion by denying Huggins' motion for reconsideration of the order. United States v. Adam, 70 F.3d 776, 779 (4th Cir. 1995) (reviewing denial of Fed. R. Crim. P. 33 motion for new trial for abuse of discretion). 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