

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4057

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ADRIAN DAVIE,

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-00051-1)

Submitted: April 10, 2008

Decided: May 22, 2008

Before KING and SHEDD, Circuit Judges, and WILKINS, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Mary Lou Newberger, Federal Public Defender, Jonathan D. Byrne, Appellate Counsel, Lex A. Coleman, Assistant Federal Public Defender, Charleston, West Virginia, for Appellant. Lisa Grimes Johnston, OFFICE OF THE UNITED STATES ATTORNEY, Huntington, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Adrian Davie pled guilty to possession with intent to distribute cocaine base and was sentenced to fifty-seven months of imprisonment. The district court rejected Davie's request for a variance sentence based on the sentencing disparity between crack and powder cocaine under the Sentencing Guidelines, relying on then-binding precedent. See United States v. Eura, 440 F.3d 625, 632-34 (4th Cir. 2006) (holding that 100:1 ratio cannot be the basis of a variance), vacated, 128 S. Ct. 853 (2008). Because Eura was vacated by the Supreme Court's opinion in Kimbrough v. United States, 128 S. Ct. 558 (2007), we grant the parties' joint motion to remand in light of that opinion. Accordingly we vacate and remand for resentencing in light of Kimbrough.*

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.

VACATED AND REMANDED

*We offer no criticism of the district court which properly applied the relevant law at the time of sentencing.