

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4713

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL JOSEPH EASON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, Chief District Judge. (5:07-cr-00262-FL-1)

Submitted: May 5, 2009

Decided: July 1, 2009

Before WILKINSON and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Walter H. Paramore, III, WALTER H. PARAMORE, III, P.C., Jacksonville, North Carolina, for Appellant. George E. B. Holding, United States Attorney, Anne M. Hayes, Jennifer P. May-Parker, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Joseph Eason appeals the 120-month departure sentence imposed by the district court following his plea of guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924 (2000). Eason asserts that the district court erred by imposing a departure sentence without first affording him adequate notice that it planned to depart upward pursuant to U.S. Sentencing Guidelines Manual ("USSG") § 4A1.3, p.s.

Rule 32(h) of the Federal Rules of Criminal Procedure requires that the sentencing court give the parties reasonable notice that it is considering a departure on a ground not identified as a possible basis for departure either in the presentence report or in a party's prehearing submission. Fed. R. Crim. P. 32(h). In its comments at sentencing and its written order explaining the upward departure, the district court relied on USSG § 5K2.21, p.s., as well as § 4A1.3, p.s. The presentence report specifically identified USSG § 5K2.21 as a possible ground for upward departure. We are satisfied that Eason was not prejudiced because the district court cited § 4A1.3 for principles echoed in its analysis under USSG § 5K2.21 and 18 U.S.C. § 3553(a). Accordingly, we conclude that any error by the district court in failing to give such notice

was harmless. Eason lodges no further claim of error with respect to his sentence.

We therefore affirm the judgment of the district court. 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