

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 09-4809**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DWAYNE ANDERSON, a/k/a Dewayne Anderson,

Defendant - Appellant.

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Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, District Judge. (1:06-cr-00020-IMK-8)

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Submitted: October 22, 2010

Decided: December 6, 2010

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Before WILKINSON, SHEDD, and DAVIS, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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John J. Pizzuti, MCCAMIC, SACCO, PIZZUTI & MCCOID, PLLC, Wheeling, West Virginia, for Appellant. Betsy C. Jividen, Acting United States Attorney, Zelda E. Wesley, Assistant United States Attorney, Clarksburg, West Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dwayne Anderson was sentenced to 292 months' imprisonment after a jury found him guilty of conspiracy to possess with intent to distribute and distribute in excess of fifty grams of cocaine base, in violation of 21 U.S.C. §§ 841, 846 (2006) (Count One), and distribution of 1.73 grams of cocaine and aiding and abetting, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (2006) (Count Thirteen). Anderson filed a timely appeal, challenging the sufficiency of the evidence supporting the convictions. In our prior decision, we concluded that sufficient evidence supported Anderson's conviction on Count Thirteen, but not as to Count One. We affirmed Anderson's conviction on Count Thirteen, reversed his conviction on Count One, and remanded. United States v. Anderson, 282 F. App'x 255 (4th Cir. 2008) (No. 07-4303).

On remand, the district court adopted its findings from the earlier sentencing proceeding regarding Anderson's relevant conduct and criminal history and sentenced Anderson to 188 months' imprisonment. Anderson again appeals, contending that the district court made numerous errors in his resentencing – including failing to order a new Presentence Report and using acquitted conduct in determining his relevant conduct – and abused its discretion by denying his recusal motion.

We have thoroughly examined the record and find Anderson's contentions to be without merit. Accordingly, we affirm his sentence. 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