

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-4045**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK CHARLES GREEN,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, Senior District Judge. (5:09-cr-00092-H-1)

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Submitted: November 5, 2010

Decided: December 10, 2010

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Before NIEMEYER, DAVIS, and KEENAN, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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Thomas P. McNamara, Federal Public Defender, Stephen C. Gordon, Assistant Federal Public Defender, Raleigh, 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.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Charles Green appeals the sixty-month sentence imposed following his guilty plea to possession of fifty grams or more of cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) (2006). On appeal, Green contends that the district court procedurally erred in sentencing him by failing to recognize its authority to reject the crack-to-powder-cocaine sentencing disparity. The Government concurs. After carefully reviewing the record, we agree that the court procedurally erred, vacate Green's sentence, and remand for further proceedings in light of Spears v. United States, 129 S. Ct. 840, 843-44 (2009) ("[D]istrict courts are entitled to reject and vary categorically from the crack-cocaine Guidelines based on a policy disagreement with those Guidelines."). We dispense with oral argument because the issues are adequately presented before the court and argument would not aid the decisional process.

VACATED AND REMANDED