

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4924

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK LORENZO HAMILTON, a/k/a Eric Lorenzo Johnson,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., Chief District Judge. (3:07-cr-00143-RJC-1)

Submitted: September 23, 2011

Decided: October 18, 2011

Before MOTZ, KING, and AGEE, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Claire J. Rauscher, Executive Director, Ann L. Hester, Rahwa Gebre-Egziabher, Assistant Federal Public Defenders, Charlotte, North Carolina, for Appellant. Anne M. Tompkins, United States Attorney, Amy E. Ray, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Lorenzo Hamilton appeals the eighteen-month sentence imposed upon revocation of supervised release. On appeal, Hamilton claims that the district court erroneously determined that he had committed a Grade A supervised release violation, exposing him to a sentencing range of 18-24 months. We vacate the sentence and remand for resentencing.

Hamilton argues, as he did below, that he could have been sentenced to no more than ten months in prison pursuant to his North Carolina state conviction for possession with intent to sell and deliver marijuana. We are unable to determine from the record on appeal whether Hamilton's position is correct. If, as claimed, he was subject to only ten months in prison, application of our recent decision in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc), would appear to compel the conclusion that Hamilton committed a Grade C violation of release. This, in turn, would result in a significantly reduced range of imprisonment under U.S. Sentencing Guidelines Manual § 7B1.4 (2010).

We accordingly vacate and remand for resentencing. We express no opinion as to whether Hamilton's state conviction qualifies as a Grade C supervised release violation and leave this determination to the district court on remand. 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. The Clerk is directed to issue the mandate forthwith.

VACATED AND REMANDED