

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-4170

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KAMEL O'MEEK TERRELL,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:14-cr-00330-TDS-1)

Submitted: October 15, 2015

Decided: October 19, 2015

Before WILKINSON, AGEE, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael W. Patrick, LAW OFFICE OF MICHAEL W. PATRICK, Chapel Hill, North Carolina, for Appellant. Ripley Rand, United States Attorney, Lisa B. Boggs, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kamel O'Meek Terrell appeals his downward variance 120-month sentence, challenging the district court's application of the career offender enhancement in the Sentencing Guidelines. Terrell asserts that the career offender Guideline is invalid because it has been expanded beyond the authority granted by Congress where, like here, the predicate offenses on which the district court relied in applying the Guideline are state—rather than federal—convictions.

Terrell raised this objection before the district court but unequivocally withdrew it at sentencing. Thus, he has waived appellate review of the issue. United States v. Robinson, 744 F.3d 293, 298 (4th Cir.) (“A party who identifies an issue, and then explicitly withdraws it, has waived the issue.” (internal quotation marks omitted)), cert. denied, 135 S. Ct. 225 (2014); see United States v. Olano, 507 U.S. 725, 733 (1993) (“[W]aiver is the intentional relinquishment or abandonment of a known right.” (internal quotation marks omitted)). Even assuming the error is not waived, but merely forfeited, Terrell acknowledges that our precedent forecloses his claim. See Olano, 507 U.S. at 732 (discussing plain error standard).

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED