UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4083

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM RONALD MONROE,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. Gina M. Groh, District Judge. (3:19-cr-00014-GMG-RWT-1)

Submitted: April 26, 2022 Decided: May 25, 2022

Before KING and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

ON BRIEF: Jenny R. Thoma, Research & Writing Attorney, Wheeling, West Virginia, Aaron D. Moss, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Martinsburg, West Virginia, for Appellant. William J. Powell, United States Attorney, C. Lydia Lehman, Special Assistant United States Attorney, Robert H. McWilliams, Jr., Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In October 2019, William Ronald Monroe pled guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). Prior to sentencing, Monroe objected to the probation officer's determination that Monroe qualified for an enhanced base offense level of 26, pursuant to U.S. Sentencing Guidelines Manual § 2K2.1(a)(1) (2018), because, in relevant part, he had two prior convictions for felony controlled substance offenses. Monroe's argument hinged on his position that his 2005 District of Columbia conviction for attempted possession with intent to distribute cocaine, which yielded an 18-month sentence, did not qualify, categorically, as a "controlled substance offense" under USSG § 4B1.2(b).[1] The district court overruled the objection, ruling that the prior conviction so qualified as a "controlled substance offense" under Application Note 1 to USSG § 4B1.2(b).

Monroe appeals, challenging only this ruling. In light of our recent holding in *United States v. Campbell*, 22 F.4th 438 (4th Cir. 2022), we vacate Monroe's sentence and remand for resentencing.[2]

This court reviews all criminal sentences for reasonableness, employing an abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 41 (2007). "A sentence based on an improperly calculated Guidelines range is procedurally unreasonable." *United States v. Shephard*, 892 F.3d 666, 670 (4th Cir. 2018). "In assessing whether a district court

[1] The commentary to USSG § 2K2.1 provides that the term "controlled substance offense" as used in that Guideline "has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2." USSG § 2K2.1 cmt. n.1.

[2] Resolution of this appeal was deferred pending this court's decision in *Campbell*.

properly calculated the Guidelines range, including its application of any sentencing enhancements, we review the district court's legal conclusions de novo and its factual findings for clear error." *United States v. Fluker*, 891 F.3d 541, 547 (4th Cir. 2018) (cleaned up).

We recently considered the precise argument advanced by Monroe here and resolved it favorably to Monroe's position. The *Campbell* court, observing that the relevant question was "whether USSG § 4B1.2(b)'s definition of 'controlled substance offense' includes an attempt to deliver a controlled substance," *Campbell*, 22 F.4th at 442, held that it does not, *id*. at 443-47. Critical to this conclusion is that the text of USSG § 4B1.2(b) does not define "controlled substance offense" to include attempt offenses, while Application Note 1 to USSG § 4B1.2 does. *Id*. at 442, 444. Relying in part on *United States v. Havis*, 927 F.3d 382, 386 (6th Cir. 2019) (en banc), we ruled that the commentary's expanded definition is plainly inconsistent with the Guidelines' unambiguous text and, thus, not entitled to deference, *Campbell*, 22 F.4th at 444-47.

In light of *Campbell*, which was decided after Monroe's sentencing, it is now clear that Monroe's District of Columbia conviction for attempted possession with intent to distribute cocaine does not qualify as a predicate "controlled substance offense" under USSG § 4B1.2(b). As such and consistent with *Campbell*, we vacate Monroe's sentence and remand for resentencing. 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.

VACATED AND REMANDED