

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4178

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRIAN K. GRIFFEY,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Thomas S. Kleeh, Chief District Judge. (1:18-cr-00058-TSK-MJA-1)

Submitted: July 20, 2023

Decided: August 2, 2023

Before WYNN and HARRIS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

ON BRIEF: Jenny R. Thoma, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Clarksburg, West Virginia; Charles T. Berry, Kingmont, West Virginia, for Appellant. Andrew R. Cogar, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Clarksburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brian Griffey appeals his conviction and 180-month sentence following his guilty plea to possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(e). The Government has moved for a remand, conceding that Griffey's conditional guilty plea is invalid. Griffey agrees that his plea is invalid but opposes the motion, as he has raised additional issues on appeal.

Before pleading guilty, Griffey filed a motion to suppress. The motion was referred to a magistrate judge, who issued a report recommending denial of the motion to suppress. Griffey did not file objections to the magistrate judge's report and recommendation. Griffey subsequently entered into a plea agreement with the Government conditioned upon his ability to appeal the denial of the motion to suppress. The district court, Griffey's counsel, and the Government believed that Griffey had preserved his right to appeal the suppression issue through the conditional guilty plea. However, because Griffey failed to object to the magistrate judge's report recommending denial, he waived appellate review. Accordingly, because the right to appeal the suppression issue was illusory, Griffey's conditional guilty plea is invalid. *See United States v. Bundy*, 392 F.3d 641, 649-50 (4th Cir. 2004).

We therefore vacate Griffey's conviction, grant the Government's motion to remand, and remand this case to the district court for further proceedings. 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