UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4795

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES HOWARD SHIFFLETT,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. John Preston Bailey, Chief District Judge. (3:99-cr-00042-JPB)

Submitted: July 12, 2010   Decided: July 27, 2010

Before NIEMEYER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Scott Charlton Brown, SCOTT C. BROWN LAW OFFICE, Wheeling, West Virginia, for Appellant. Thomas Oliver Mucklow, Assistant United States Attorney, Martinsburg, West Virginia, for Appellee.

PER CURIAM:

James Howard Shifflett pled guilty to distributing oxycodone in violation of 21 U.S.C. § 841(a)(1) (2006). The district court sentenced him to 151 months. On appeal, counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating that there are no meritorious issues for appeal but questioning whether the district court erred by accepting Shifflett's guilty plea when the stipulated relevant conduct included pills that were double counted. Shifflett was informed of his right to file a pro se supplemental brief but has not done so. The Government has moved to dismiss the appeal based upon Shifflett's waiver of appellate rights. We affirm in part and dismiss in part.

A defendant may waive the right to appeal if that waiver is knowing and intelligent. United States v. Poindexter, 492 F.3d 263, 270 (4th Cir. 2007). Generally, if the district court fully questions a defendant regarding the waiver of his right to appeal during the Fed. R. Crim. P. 11 colloquy, the waiver is both valid and enforceable. United States v. Johnson, 410 F.3d 137, 151 (4th Cir. 2005); United States v. Wessells, 936 F.2d 165, 167-68 (4th Cir. 1991). The question of whether a defendant validly waived his right to appeal is a question of law that we review de novo. United States v. Blick, 408 F.3d 162, 168 (4th Cir. 2005).

Our review of the record leads us to conclude that Shifflett knowingly and voluntarily waived the right to appeal his sentence. Moreover, the issue raised on appeal is a sentencing issue, which falls within the scope of the waiver. We therefore grant, in part, the Government's motion to dismiss and dismiss this portion of the appeal.

Although the waiver provision in the plea agreement precludes our review of the sentence, the waiver does not preclude our review of any errors in Shifflett's conviction that may be revealed by our review pursuant to <u>Anders</u>. Our review of the transcript of the plea colloquy convinces us that the district court fully complied with the mandates of Rule 11 in accepting Shifflett's guilty plea. The district court ensured that the plea was entered knowingly and voluntarily and was supported by an independent factual basis. <u>See</u> <u>United States v. DeFusco</u>, 949 F.2d 114, 116, 119-20 (4th Cir. 1991). Thus, we deny, in part, the Government's motion to dismiss and affirm the conviction.

In accordance with <u>Anders</u>, we have reviewed the entire record in this case and have found no meritorious issues not covered by the waiver. We therefore affirm Shifflett's conviction and dismiss the appeal of his sentence. This court requires that counsel inform his client, in writing, of the right to petition the Supreme Court of the United States for

further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client. 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.

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AFFIRMED IN PART;
DISMISSED IN PART

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