

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4819

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREMIAS NATHAN ZETINO-RIVERA,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Richard L. Voorhees, District Judge. (5:05-cr-00030-RLV)

Submitted: February 21, 2008

Decided: February 25, 2008

Before MOTZ and GREGORY, Circuit Judges, and WILKINS, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Robert H. Hale, Jr., Raleigh, North Carolina, for Appellant. Amy Elizabeth Ray, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jeremias Nathan Zetino-Rivera pleaded guilty, pursuant to a plea agreement, to one count of using and carrying a firearm during and in relation to, and possessing a firearm in furtherance of, a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (2000). The district court sentenced Zetino-Rivera to the statutory minimum of sixty months of imprisonment. Zetino-Rivera timely appealed.

On appeal, counsel has filed an Anders* brief, in which he states there are no meritorious issues for appeal, but questions whether the district court acted unreasonably when it failed to consider the evidence offered by Zetino-Rivera in support of his motion for a variance below the statutory minimum sentence. Zetino-Rivera was advised of his right to file a pro se supplemental brief, but has not filed a brief. The Government declined to file a brief. We affirm.

Zetino-Rivera's sentence was the mandatory minimum sentence. The district court properly recognized that, absent a substantial assistance motion filed by the government pursuant to 18 U.S.C.A. § 3553(e) (West 2000 & Supp. 2007), it lacked authority to sentence Zetino-Rivera below the statutory mandatory minimum sentence. See United States v. Allen, 450 F.3d 565, 568-69 (4th Cir. 2006).

*Anders v. California, 386 U.S. 738 (1967).

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We therefore affirm Zetino-Rivera's conviction and sentence. This court requires that counsel inform Zetino-Rivera, in writing, of the right to petition the Supreme Court of the United States for further review. If Zetino-Rivera 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 Zetino-Rivera.

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.

AFFIRMED