

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-4414

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KENNETH WAYNE ODOM, a/k/a Kenny,

Defendant - Appellant.

Appeal from the United States District Court for the District of
South Carolina, at Florence. Terry L. Wooten, District Judge.
(CR-04-559)

Submitted: December 14, 2006

Decided: December 18, 2006

Before MICHAEL, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Henry M. Anderson, Jr., ANDERSON LAW FIRM, PA, Florence, South
Carolina, for Appellant. Rose Mary Parham, Assistant United States
Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth Wayne Odom appeals his conviction and 120-month sentence pursuant to his guilty pleas to one count of conspiracy to possess with intent to distribute marijuana and five grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) (2000), and one count of using a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A) (2000).

Counsel for Odom has filed a brief pursuant to Anders v. California, 386 U.S. 738 (2000), in which he states there are no meritorious issues for appeal, but presenting one issue for our review. Counsel suggests the district court erred in denying Odom's motion for a downward departure due to Odom's extraordinary physical condition. See U.S. Sentencing Guidelines Manual § 5H1.4 (2003).

A district court's decision not to depart from the sentencing guidelines is not subject to appellate review unless the refusal to depart is based on the mistaken belief that the court lacked jurisdiction to depart. United States v. Quinn, 359 F.3d 666, 682 (4th Cir. 2004) (citing United States v. Bayerle, 898 F.2d 28, 30-31 (4th Cir. 1990)); see also United States v. Cooper, 437 F.3d 324, 333 (3d Cir. 2006) (collecting cases adopting this rule after United States v. Booker, 543 U.S. 220 (2005)). Here, the district court recognized its authority to depart but found, under

the circumstances of Odom's case, that departure was not warranted. Thus, this claim is not subject to appellate review. Quinn, 359 F.3d at 682.

In accordance with Anders, we have reviewed the entire record for any meritorious issues and have found none. Accordingly, we affirm Odom's conviction and sentence. This court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but his 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.

AFFIRMED