

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 05-4933

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SCOTTIE WHITAKER,

Defendant - Appellant.

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No. 05-5020

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

NATHAN PETWAY,

Defendant - Appellant.

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Appeals from the United States District Court for the Eastern  
District of North Carolina, at New Bern. Malcolm J. Howard,  
District Judge. (CR-04-56-H)

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Submitted: November 13, 2006

Decided: December 7, 2006

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Before WILKINSON, MICHAEL, and SHEDD, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Nora Henry Hargrove, Wilmington, North Carolina; David B. Betts, Columbia, South Carolina, for Appellants. Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Scottie Whitaker and Nathan Petway were convicted by a jury of one count of conspiracy to commit armed bank robbery, in violation of 18 U.S.C. §§ 371, 2113 (2000) (Count One); one count of armed bank robbery, in violation of 18 U.S.C. §§ 2113, 2 (2000) (Count Two); and one count of using and carrying firearms during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 924(c)(1), 2 (West Supp. 2006) (Count Three). Whitaker was also convicted of one count of possession of a firearm after having been convicted of a crime punishable by more than one year of imprisonment, in violation of 18 U.S.C. § 922(g) (2000) (Count Five). The district court sentenced Whitaker to a total of 192 months of imprisonment. Petway's prior criminal record qualified him for an enhanced sentence as a career offender, and the district court sentenced him to a total of 300 months of imprisonment after granting his request for a variance from the sentencing range calculated under the Sentencing Guidelines.<sup>1</sup>

The defendants timely appealed, and the cases were consolidated. On appeal, counsel filed an Anders<sup>2</sup> brief, in which they state there are no meritorious issues for appeal, but suggest that the district court erred in denying defendants' motions for judgment of acquittal and submitting the case to the jury.

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<sup>1</sup>U.S. Sentencing Guidelines Manual (2004) (USSG).

<sup>2</sup>Anders v. California, 386 U.S. 738 (1967).

Whitaker and Petway each filed a pro se supplemental brief. The Government declined to file a brief. We affirm.

Counsel suggest that the district court erred in denying defendants' motion for judgment of acquittal because the evidence was insufficient to submit the case to the jury. A defendant challenging the sufficiency of the evidence faces a heavy burden. United States v. Beidler, 110 F.3d 1064, 1067 (4th Cir. 1997). "[A]n appellate court's reversal of a conviction on grounds of insufficient evidence should be confined to cases where the prosecution's failure is clear." United States v. Jones, 735 F.2d 785, 791 (4th Cir. 1984). A jury's verdict must be upheld on appeal if there is substantial evidence in the record to support it. Glasser v. United States, 315 U.S. 60, 80 (1942). In determining whether the evidence in the record is substantial, this court views the evidence in the light most favorable to the government, and inquires whether there is evidence that a reasonable finder of fact could accept as adequate and sufficient to establish a defendant's guilt beyond a reasonable doubt. United States v. Burgos, 94 F.3d 849, 862 (4th Cir. 1996) (en banc). In evaluating the sufficiency of the evidence, we do not review the credibility of the witnesses and assume that the jury resolved all contradictions in the testimony in favor of the government. United States v. Romer, 148 F.3d 359, 364 (4th Cir. 1998). Our review of the record leads us to conclude that the evidence was sufficient to

submit the case to the jury and to sustain the jury's verdicts of guilt.

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We have considered the arguments asserted in the pro se briefs submitted by Whitaker and Petway and find them to be without merit. We therefore affirm the convictions and sentences. We deny Whitaker's motions to file additional supplemental briefs. This court requires that counsel inform their 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.

AFFIRMED