

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-5007**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOHN JOSEPH DAVIS,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Anderson. Henry F. Floyd, District Judge. (CR-04-283)

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Submitted: March 24, 2006

Decided: April 28, 2006

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Before NIEMEYER, TRAXLER, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Hervery B. O. Young, Assistant Federal Public Defender, Greenville, South Carolina, for Appellant. Alan Lance Crick, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

John Joseph Davis appeals his conviction and forty-month sentence imposed following a guilty plea to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), 924(a)(2), and 924(e) (2000). Davis's attorney has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), raising the argument that the sentence was unreasonable, but stating that he finds no meritorious grounds for appeal. The Government did not file an answering brief, and although advised of his right to do so, Davis did not file a pro se supplemental brief.

As required by Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. The district court sentenced Davis below the statutorily prescribed maximum of ten years' imprisonment, and within the properly calculated range of the sentencing guidelines, between thirty-seven and forty-six months.\* See United States v. Green, 436 F.3d 449, 455-56 (4th Cir. 2006). We find Davis's sentence of forty months to be reasonable. We therefore affirm Davis's conviction and sentence.

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\*We note that although the district court expressed its intention during the August 26, 2005 sentencing hearing to impose a shorter sentence, that sentence was conditioned upon Davis's passing a drug test. When Davis failed the test, the district court held a new sentencing hearing on September 9, 2005, at which it imposed the forty-month sentence from which Davis appeals.

This court requires that counsel inform the 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 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