

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4539

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

STANLEY LEON WADDELL,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., District Judge. (1:05-cr-00347-NCT)

Submitted: January 18, 2007

Decided: January 22, 2007

Before WILKINSON, TRAXLER, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James E. Quander, Jr., QUANDER & RUBAIN, P.A., Winston-Salem, North Carolina, for Appellant. Sandra Jane Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Stanley Leon Waddell appeals his conviction and sentence for possession with intent to distribute cocaine base. Waddell pled guilty to the charge and was sentenced as a career offender to 190 months' imprisonment. On appeal, Waddell's counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating that in counsel's opinion, there are no meritorious issues for appeal. Waddell has filed a pro se supplemental brief challenging his sentence and arguing that: (1) the court should have granted a downward departure from the calculated sentencing range on the basis of mental and emotional conditions caused by his drug addiction; and (2) his sentence was unconstitutional because the prior convictions used to enhance his sentence were not charged in the indictment, admitted, or proved to a jury beyond a reasonable doubt.

Waddell's claim that he was entitled to a downward departure from the advisory Sentencing Guidelines range based on mental and emotional conditions is not supported by the record. Moreover, even if counsel had sought a departure, the court's decision whether to grant it would have been entirely discretionary. United States v. Moreland, 437 F.3d 424, 434 (4th Cir.), cert. denied, 126 S. Ct. 2054 (2006). The court's statements at sentencing indicate that it would not have entertained such a request. In addition, Waddell's assertion that

his sentence was unconstitutionally enhanced is foreclosed by this circuit's precedent. See United States v. Cheek, 415 F.3d 349, 352-54 (4th Cir.), cert. denied, 126 S. Ct. 640 (2005) (prior convictions need not be charged in the indictment, admitted by the defendant or proved to a jury).

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We therefore affirm Waddell's conviction and 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 Waddell requests that a petition be filed, but counsel believes 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 Waddell.

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