

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4410

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PETER JEROME GAITHER,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Senior District Judge. (1:06-cr-00363-WLO)

Submitted: October 29, 2007

Decided: November 16, 2007

Before WILKINSON and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Louis C. Allen, III, Federal Public Defender, William S. Trivette, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Lisa Blue Boggs, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Pursuant to a written plea agreement, Peter Jerome Gaither pled guilty to possession with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B) (2000), and to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (2000). Gaither was sentenced to 115 months' imprisonment for each offense, to run concurrently. Finding no error, we affirm.

On appeal, counsel filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), asserting there are no meritorious issues for appeal, but contending that Gaither's sentence was unreasonable. Gaither was advised of his right to file a pro se supplemental brief, but he did not do so, and the Government elected not to file a responsive brief.

Gaither contends that his sentence is unreasonable because he had never before been sentenced to a term of imprisonment and the imposition of 115 months as a first prison term is unreasonable. However, the district court appropriately calculated the advisory Guidelines range and considered it in conjunction with other relevant factors under the Guidelines and 18 U.S.C. § 3553(a) (2000). See United States v. Moreland, 437 F.3d 424, 432-33 (4th Cir.), cert. denied, 126 S. Ct. 2054 (2006). Gaither's sentence, which is well within the applicable Guidelines range and the statutory maximum, is therefore reasonable. See

United States v. Green, 436 F.3d 449, 457 (4th Cir.), cert. denied, 126 S. Ct. 2309 (2006); see also Rita v. United States, 127 S. Ct. 2456, 2462-65 (2007).

Pursuant to Anders, we have examined the entire record and find no meritorious issues for appeal. We therefore affirm the district court's judgment. 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 Gaither requests that such 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 Gaither.

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