UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4610

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JEFFERY PEDRO STIVENDER,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Matthew J. Perry, Jr., Senior District Judge. (3:06-cr-00791-MJP)

Submitted: December 14, 2007 Decided: January 10, 2008

Before NIEMEYER, MOTZ, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Allen B. Burnside, Assistant Federal Public Defender, Columbia, South Carolina, for Appellant. Kevin F. McDonald, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Pursuant to a plea agreement, Jeffery Pedro Stivender pled guilty to one count of making false claims to the Internal Revenue Service, in violation of 18 U.S.C. §§ 287, 2 (2000). The district court imposed a forty-one-month sentence. Stivender timely appealed.

Stivender's attorney has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), questioning whether the district court erred by considering the intended loss, rather than the actual loss, in calculating Stivender's guideline range. Counsel states, however, that he has found no meritorious grounds for appeal. Stivender was advised of his right to file a pro se supplemental brief, but he did not file one. Finding no meritorious grounds for appeal, we affirm.

Stivender argues that the court should have considered the actual loss, rather than the intended loss, in calculating his guideline range. However, the guidelines authorize the district court to increase the offense level based on the greater of the actual or intended loss, U.S. Sentencing Guidelines Manual § 2B1.1 cmt. n.3(A) (2006), and in this case, the intended loss was greater than the actual loss. We therefore conclude that Stivender's claim is without merit.

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. Accordingly, we affirm Stivender's conviction and sentence.

This court requires that counsel inform Stivender, in writing, of the right to petition the Supreme Court of the United States for further review. If Stivender 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 Stivender. 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