

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4298

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AUBORN FRANK SMITH,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Henry F. Floyd, District Judge. (8:07-cr-00400-HFF-1)

Submitted: December 16, 2008

Decided: December 22, 2008

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Lora E. Collins, Assistant Federal Public Defender, Greenville, South Carolina, for Appellant. Leesa Washington, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Auborn Frank Smith appeals from his conviction and 180-month sentence imposed following his guilty plea to possession of a firearm by a convicted felon. Smith's attorney filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), addressing the validity of the plea and the reasonableness of the sentence, but stating that there was no merit to the appeal. Smith was advised of his right to file a pro se supplemental brief, but has not done so. Our review of the record discloses no reversible error; accordingly, we affirm Smith's conviction and sentence.

We find that Smith's guilty plea was knowingly and voluntarily entered after a thorough hearing pursuant to Fed. R. Crim. P. 11. Smith was properly advised of his rights, the offense charged, and the mandatory minimum and the maximum sentence for the offense. The court also determined that there was an independent factual basis for the plea and that the plea was not coerced or influenced by any promises. See United States v. DeFusco, 949 F.2d 114, 119-20 (4th Cir. 1991).

Appellate courts review sentences imposed by district courts for reasonableness, applying an abuse of discretion standard. Gall v. United States, 128 S. Ct. 586, 597 (2007); see also United States v. Pauley, 511 F.3d 468, 473 (4th Cir. 2007). When sentencing a defendant, a district court must:

(1) properly calculate the guideline range; (2) treat the guidelines as advisory; (3) consider the factors set out in 18 U.S.C.A. § 3553(a) (West 2000 & Supp. 2008); and (4) explain its reasons for selecting a sentence. Pauley, 511 F.3d at 473. We presume that a sentence within the properly calculated sentencing guidelines range is reasonable. United States v. Allen, 491 F.3d 178, 193 (4th Cir. 2007); see also Rita v. United States, 127 S. Ct. 2456, 2462-69 (2007) (upholding application of rebuttable presumption of correctness of within guideline sentence).

Here, the district court imposed a variance sentence of 180 months, which was below the advisory guideline range. Because the district court adequately explained the bases for the variance and because the amount of the variance was reasonable, we find no abuse of discretion in the sentence of 180 months of imprisonment.

As required by Anders, we have reviewed the entire record and have found no meritorious issues for appeal. We therefore affirm Smith's conviction and sentence. This court requires that counsel inform her 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