

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4415

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES EARL CLODFELTER,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., District Judge. (1:07-cr-00348-NCT-1)

Submitted: January 6, 2009

Decided: February 6, 2009

Before NIEMEYER, KING, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

John Archibald Dusenbury, Jr., Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Angela Hewlett Miller, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Earl Clodfelter appeals his sentence to 240 months in prison after pleading guilty to possession with intent to distribute seventy-seven grams of cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A) (2006), and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (2006). On appeal, Clodfelter's attorney has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), asserting, in his opinion, there are no meritorious grounds for appeal but raising the issue of whether the district court erred in imposing a sentence of 240 months in prison. Clodfelter was notified of his right to file a pro se supplemental brief, but he has not done so. Finding no error, we affirm.

We review a sentence for abuse of discretion. See Gall v. United States, 128 S. Ct. 586, 590 (2007). The first step in this review requires us to ensure that the district court committed no significant procedural error, such as improperly calculating the guideline range. United States v. Osborne, 514 F.3d 377, 387 (4th Cir.), cert. denied, 128 S. Ct. 2525 (2008). We then consider the substantive reasonableness of the sentence imposed, taking into account the totality of the circumstances. Gall, 128 S. Ct. at 597. When reviewing a sentence on appeal, we presume that a sentence within a properly calculated guideline range is reasonable.

United States v. Allen, 491 F.3d 178, 193 (4th Cir. 2007). A statutorily required sentence is per se reasonable. United States v. Farrior, 535 F.3d 210, 224 (4th Cir. 2008).

We have reviewed the record and conclude that the district court did not err or abuse its discretion in sentencing Clodfelter, and his sentence is reasonable. The Government filed an information of prior conviction for a felony drug offense before entry of Clodfelter's guilty plea, subjecting him to a mandatory minimum prison term of twenty years under 21 U.S.C. § 841(b)(1)(A). At sentencing, Clodfelter affirmed the prior conviction. Because Clodfelter's ordinary guideline range was less than 240 months, the district court properly found his guideline sentence was 240 months and imposed that sentence.

In accordance with Anders, we have reviewed the entire record in this case and have found 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 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