

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-5173

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDREW LONNIE SCOTT,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Senior District Judge. (5:07-cr-00144-F-1)

Submitted: May 28, 2009

Decided: June 16, 2009

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

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, G. Alan DuBois, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Andrew Lonnie Scott pled guilty pursuant to a written plea agreement to possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1) (2006), and he was sentenced to ninety-six months' imprisonment. Appellate counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), in which he asserts there are no meritorious issues for appeal but questions whether the district court erred in its application of U.S. Sentencing Guidelines Manual § 2K2.1(b)(1)(A) (2007). Scott was notified of his right to file a pro se supplemental brief, but he did not do so. The Government moves to dismiss the appeal, asserting the issue raised by counsel is precluded by the waiver of appellate rights in Scott's plea agreement.

Upon review of the plea agreement and the transcript of the Fed. R. Crim. P. 11 hearing, we conclude that Scott knowingly and voluntarily waived his right to appeal. Further, because the issue raised by appellate counsel clearly falls within the scope of the waiver, the terms of the agreement will be enforced. Accordingly, we grant the Government's motion to dismiss the sentencing issue. However, because the appeal waiver pertains only to Scott's sentence, we have reviewed the conviction pursuant to Anders. As we have found no meritorious issues for appeal, we affirm Scott's conviction.

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 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.

DISMISSED IN PART;
AFFIRMED IN PART