

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-5210

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERVIN WASHINGTON DANIELS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (7:08-cr-00036-D-1)

Submitted: December 17, 2009

Decided: December 23, 2009

Before WILKINSON, NIEMEYER, and AGEE, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

David L. Neal, Hillsborough, 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Unpublished opinions are not binding precedent in this circuit.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:

Ervin Washington Daniels pled guilty pursuant to a written plea agreement to one count of manufacturing child pornography in violation of 18 U.S.C.A. § 2251(a) (West Supp. 2009). On appeal, counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), asserting there are no meritorious grounds for appeal, but raising the following issue: whether the district court imposed an unreasonable sentence by erring as a matter of law in the application of U.S. Sentencing Guidelines Manual § 2G2.1(b)(2)(B) (2008), failing to consider all the 18 U.S.C.A. § 3553(a) (West 2000 & Supp. 2009) factors, failing to adequately explain the sentence imposed, and treating the unreasonably high advisory Sentencing Guidelines range as presumptively reasonable. The Government has filed a motion to dismiss the appeal of Daniels' sentence on the grounds of appellate waiver. For the reasons that follow, we dismiss the appeal of Daniels' sentence and affirm his conviction.

We grant the Government's motion to dismiss the appeal of Daniels' sentence. See United States v. Marin, 961 F.2d 493, 496 (4th Cir. 1992) (providing review standard). The record reveals that Daniels waived his right to appeal any sentence not in excess of a sentence imposed within the advisory Sentencing Guidelines range and that this waiver was reviewed with Daniels

at his plea hearing, which also revealed that he knowingly and voluntarily pled guilty to his offense. United States v. Wessells, 936 F.2d 165, 167-68 (4th Cir. 1991). Because Daniels' 360-month sentence was within his properly-calculated sentencing range; not in excess of the statutory maximum, United States v. General, 278 F.3d 389, 399 n.4 (4th Cir. 2002); not imposed for a constitutionally improper reason, United States v. Marin, 961 F.2d 493, 496 (4th Cir. 1992); and not in violation of his Sixth Amendment right to counsel, United States v. Attar, 38 F.3d 727, 732-33 (4th Cir. 1994); we grant the Government's motion to dismiss the appeal of Daniels' sentence.

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