US v. DeShawn McBeth Doc. 920090717

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4228

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DESHAWN MCBETH,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, District Judge. (2:08-cr-01162-PMD-1)

Submitted: June 30, 2009 Decided: July 17, 2009

Before WILKINSON, NIEMEYER, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

J. Robert Haley, Assistant Federal Public Defender, Charleston, South Carolina, for Appellant. Robert Nicholas Bianchi, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Deshawn McBeth appeals the district court's judgment revoking his supervised release and sentencing him to twenty-four months' imprisonment. McBeth's counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating that there are no meritorious issues for appeal, but questioning whether the sentence, which is above the policy statement range but within the statutory maximum, is plainly unreasonable. McBeth was advised of his right to file a pro se supplemental brief, but he did not file one.

Our review of the record leads us to conclude that the district court sufficiently considered the advisory policy statement range of eight to fourteen months and the statutory sentencing factors in imposing a sentence above the policy statement range but within the statutory maximum set forth in 18 U.S.C. § 3583(e)(3) (2006). We therefore conclude that the sentence imposed upon revocation of supervised release is not plainly unreasonable. See United States v. Crudup, 461 F.3d 433, 439-40 (4th Cir. 2006) (providing standard).

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We therefore affirm the judgment revoking McBeth's supervised release and imposing a twenty-four month term of imprisonment. This court requires that counsel inform McBeth, in writing, of

the right to petition the Supreme Court of the United States for further review. If McBeth 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 McBeth. 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