

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4402

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERMAL OLLIE CLEMONS,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Henry F. Floyd, District Judge. (8:09-cr-00788-HFF-1)

Submitted: February 10, 2011 Decided: February 17, 2011

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

Affirmed by unpublished per curiam opinion.

John Wesley Locklair, III, LOCKLAIR & LOCKLAIR, PC, Columbia, South Carolina, for Appellant. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jermal Ollie Clemons pled guilty to conspiracy to possess with intent to distribute and to distribute cocaine base. The district court sentenced Clemons to 186 months in prison. On appeal, Clemons' counsel has filed an Anders* brief, stating that there are no viable grounds for appeal, but questioning whether trial counsel rendered ineffective assistance. Although informed of his right to do so, Clemons has not filed a supplemental brief. We affirm.

Clemons asserts that his attorney was ineffective for incorrectly predicting the applicable Guidelines range prior to Clemons' guilty plea. However, ineffective assistance claims are more appropriately raised in a motion filed pursuant to 28 U.S.C.A. § 2255 (West Supp. 2010), unless counsel's ineffectiveness conclusively appears on the record. See United States v. Richardson, 195 F.3d 192, 198 (4th Cir. 1999). After review of the record, we find no conclusive evidence that counsel rendered ineffective assistance, and we accordingly decline to consider these claims on direct appeal.

In accordance with Anders, we have reviewed the remainder of the record in this case and have found no meritorious issues for review. We therefore affirm Clemons'

* Anders v. California, 386 U.S. 738 (1967).

conviction and sentence. This court requires that counsel inform Clemons, in writing, of the right to petition the Supreme Court of the United States for further review. If Clemons 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 Clemons. 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