

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4649

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TONY DERELL HAWK,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., Chief District Judge. (1:08-cr-00413-JAB-1)

Submitted: December 21, 2010

Decided: January 3, 2011

Before NIEMEYER and KEENAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Amy Lee Copeland, AMY LEE COPELAND, LLC, Savannah, Georgia, for Appellant. Anna Mills Wagoner, OFFICE OF THE UNITED STATES ATTORNEY, Sandra Jane Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tony Derrell Hawk pleaded guilty to one count of possession with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) (2006), and one count of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (2006). Granting the motion of the United States for a downward departure, the district court sentenced Hawk to consecutive fifty month sentences, ten months below the mandatory five-year minimum applicable to both counts. Hawk now appeals his 100-month active sentence. His attorney has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating that there are no meritorious issues for appeal but asking the court to review the extent of the sentencing departure. Hawk was informed of his right to file a pro se supplemental brief, but did not do so. For the reasons that follow, we affirm Hawk's sentence.

Appellate courts "lack jurisdiction to review the extent of the district court's downward departure." United States v. Hill, 70 F.3d 321, 324 (4th Cir. 1994) (emphasis in original). Accordingly, the ground raised for appeal by counsel on appeal lacks merit. We have examined the entire record in accordance with the requirements of Anders and have found no

meritorious issues for appeal. We therefore affirm Hawk's conviction.

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