

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-4165

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

QIZHU SUN,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, District Judge. (1:11-cr-00085-CCE-4)

Submitted: December 20, 2012

Decided: December 26, 2012

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

Affirmed by unpublished per curiam opinion.

Stephen F. Wallace, THE WALLACE LAW FIRM, High Point, North Carolina, for Appellant. Frank Joseph Chut, Jr., Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Qizhu Sun appeals from his convictions and 46-month sentence entered pursuant to his guilty plea to conspiracy to commit access device fraud and aggravated identity theft. 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 questioning whether the district court's acceptance of Sun's guilty plea was in compliance with Fed. R. Crim. P. 11 and whether Sun was properly sentenced. Sun was notified of his right to file a pro se supplemental brief but has not done so. For the reasons that follow, we affirm.

First, because Sun did not challenge the validity of his guilty plea in the district court, we review only for plain error. See United States v. Martinez, 277 F.3d 517, 527 (4th Cir. 2002). Our review of the record reveals that the district court complied with the dictates of Rule 11 and committed no error warranting correction on plain error review.

Second, we have reviewed Sun's sentence and conclude that it was both procedurally and substantively reasonable. Gall v. United States, 552 U.S. 38, 51 (2007). The district court correctly calculated Sun's Guidelines range, without objection; heard argument on the appropriate sentence; and sufficiently explained the selected sentence. The court granted the Government's request for a downward departure

under United States Sentencing Guidelines Manual § 5K1.1 (2011) based on Sun's substantial assistance and gave adequate reasoning for the departure. Sun's sentence was below the bottom of the applicable Guidelines range, and Sun has failed to overcome the presumption of reasonableness accorded his sentence. See United States v. Susi, 674 F.3d 278, 289 (4th Cir. 2012).

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We therefore affirm Sun's convictions and sentence. This court requires that counsel inform Sun, in writing, of the right to petition the Supreme Court of the United States for further review. If Sun 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 Sun. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED