

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-4708

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS OTIS MACKEY, a/k/a Miami,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. J. Michelle Childs, District Judge. (6:10-cr-00421-JMC-1)

Submitted: February 5, 2013

Decided: February 8, 2013

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

Affirmed by unpublished per curiam opinion.

James B. Loggins, Assistant Federal Public Defender, Greenville, South Carolina, for Appellant. Alan Lance Crick, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Otis Mackey appeals his conviction and sixty-month sentence imposed after remand. Mackey pled guilty without the benefit of a plea agreement to one count of conspiracy to possess with intent to distribute fifty grams or more of crack cocaine, in violation of 21 U.S.C.A. §§ 841(a)(1), (b)(1) (West 1999 & Supp. 2012). Counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), asserting that there are no meritorious issues but raising for the court's consideration whether the district court erred by ordering the statutory minimum sentence. Mackey was informed of the opportunity to file a pro se brief, but did not do so. The Government did not file a brief. Finding no error, we affirm.

We have reviewed the Rule 11 hearing and conclude that there was no error when the district court accepted Mackey's guilty plea. Accordingly, we affirm the conviction.

We have reviewed the sentence and conclude there was no error. Mackey was sentenced in accordance with the Fair Sentencing Act of 2010 ("FSA"), Pub. L. No. 111-220, 124 Stat. 2372. Under the FSA, the statutory minimum sentence for Mackey's offense was five years' imprisonment. The district court could not impose a sentence below that statutory minimum sentence without a motion filed by the Government. See 18 U.S.C. § 3553(e) (2006); see also Melendez v. United States, 518

U.S. 120, 125-30 (1996). Because the Government did not move for a lower sentence, and we note there was no agreement to do so, the court properly found it could not impose a sentence below the statutory minimum sentence.

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We therefore affirm Mackey's conviction and sentence. This court requires that counsel inform Mackey, in writing, of the right to petition the Supreme Court of the United States for further review. If Mackey 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 Mackey.

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