

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-4186

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODNEY CARTER, a/k/a Doc Roc,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. John Preston Bailey, Chief District Judge. (5:12-cr-00031-JPB-JES-1)

Submitted: September 9, 2013

Decided: September 24, 2013

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Brendan S. Leary, Assistant Federal Public Defender, Wheeling, West Virginia, for Appellant. Randolph John Bernard, OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rodney Carter pled guilty in accordance with a written plea agreement to conspiracy to possess with intent to distribute and to distribute oxycodone, 21 U.S.C. §§ 841(b)(1)(c), 846 (2006). Carter was sentenced to thirty months in prison. He now appeals. 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. Carter was advised of his right to file a pro se supplemental brief but did not file such a brief. We affirm in part and dismiss in part.

The United States moves to dismiss the appeal based on Carter's waiver in his plea agreement of his right to appeal any sentence determined using a base offense level of 26 or lower. Upon review of the record, including the plea agreement, the transcript of the Fed. R. Crim. P. 11 proceeding, the presentence investigation report, and the sentencing transcript, we conclude that Carter knowingly and voluntarily waived his right to appeal his sentence and that the waiver is valid and enforceable. Accordingly, with respect to Carter's sentence, we grant the motion to dismiss.

Carter did not waive his right to appeal his conviction, however. We have reviewed the record in accordance with Anders and conclude that Carter knowingly and voluntarily

entered his guilty plea, the district court fully complied with Fed. R. Crim. P. 11, and there was a factual basis for the plea. We therefore deny the motion to dismiss insofar as it pertains to Carter's conviction, which we affirm.

In accordance with Anders, we have reviewed the entire record for meritorious issues and have found none. We therefore affirm in part and dismiss in part. This court requires that counsel inform Carter, in writing, of his right to petition the Supreme Court of the United State for further review. If Carter requests that such a petition be filed, but counsel believes that the 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 of the motion was served on Carter. 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.

DISMISSED IN PART;
AFFIRMED IN PART