US v. Roscoe Small, Jr.
Doc. 405699830

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-4269

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROSCOE HOWARD SMALL, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:00-cr-00331-NCT-1)

Submitted: October 30, 2015 Decided: November 6, 2015

Before NIEMEYER, GREGORY, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Mark A. Jones, BELL, DAVIS & PITT, PA, Winston-Salem, North Carolina, for Appellant. JoAnna Gibson McFadden, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Roscoe Howard Small, Jr., appeals the district court's judgment revoking his supervised release and sentencing him to 24 months' imprisonment. Small's counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating that there are no meritorious issues for appeal but questioning whether the district court abused its discretion by admitting hearsay evidence during Small's revocation hearing. Small was advised of his right to file a pro se supplemental brief, but he has not filed one. We affirm.

At the revocation hearing, Small's counsel objected to a police officer's testimony describing the statement of an anonymous caller. The district court, however, made clear that it considered this testimony merely for context and not for the truth of the caller's statement. The statement was thus not hearsay. See Fed. R. Evid. 801(c)(2). Small's counsel also objected to the district court's consideration of the officer's testimony about a second officer's out-of-court statement. On examination by the court, the witness officer clarified that the basis for his testimony was his own personal knowledge, not the second officer's statement. We therefore conclude that the district court did not err in overruling both objections, for the officer's testimony did not contain inadmissible hearsay.

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

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