

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 16-4110

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EZRA AKIM SAMPSON,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Chief District Judge. (3:14-cr-00233-FDW-1)

Submitted: August 31, 2018

Decided: September 12, 2018

Before WILKINSON, NIEMEYER, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Anthony Martinez, Federal Public Defender, Charlotte, North Carolina, Joshua B. Carpenter, Appellate Chief, FEDERAL PUBLIC DEFENDERS FOR THE WESTERN DISTRICT OF NORTH CAROLINA, INC., Asheville, North Carolina, for Appellant. Amy Elizabeth Ray, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ezra Akim Sampson appeals his 64-month sentence imposed by the district court after he pleaded guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (2012). Appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), concluding that there are no meritorious grounds for appeal.* Counsel questions, however, whether the district court properly calculated Sampson’s Sentencing Guidelines range when it determined that North Carolina common-law robbery is a crime of violence and that Sampson had used a firearm in connection with another felony offense. See U.S. Sentencing Guidelines Manual, §§ 2K2.1(a)(4), (b)(6), 4B1.2(a) (2015). We affirm.

In determining whether a district court properly applied the Sentencing Guidelines, “we review the court’s factual findings for clear error and its legal conclusions de novo.” *United States v. Oceanic Illsabe Ltd.*, 889 F.3d 178, 194 (4th Cir. 2018).

Sampson first contends that North Carolina common-law robbery is a not a crime of violence. However, the Guidelines are not amenable to constitutional vagueness challenges. *Beckles v. United States*, 137 S. Ct. 886, 892 (2016). Furthermore, we have held that North Carolina larceny from the person, a lesser-included offense of common-law robbery, qualifies as a crime of violence under the residual clause in § 4B1.2(a) in effect at the time the district court sentenced Sampson. *United States v. Jarmon*, 596 F.3d

* Because the Government has not invoked the appellate waiver on appeal, we are not limited by the waiver provision in conducting our review pursuant to *Anders*. See *United States v. Poindexter*, 492 F.3d 263, 271 (4th Cir. 2007).

228, 233 (4th Cir. 2010); *State v. White*, 542 S.E.2d 265, 267 (N.C. Ct. App. 2001) (“Larceny from the person is a lesser included offense of common law robbery.”). Thus, the district court did not err in concluding that common-law robbery is a crime of violence.

Sampson next contends that the district court erred in ruling that he used the firearm for which he was charged in connection with another felony offense. “We accord the district court’s credibility determinations great deference.” *United States v. Bolton*, 858 F.3d 905, 913 (4th Cir. 2017) (internal quotation marks omitted). Here, in considering the witnesses’ testimony at the sentencing hearing, the district court noted the arresting officer’s training and experience, the physical evidence corroborating the officer’s testimony, and the implausibility of Sampson’s and his cousin’s testimony. Thus, we conclude that the district court’s decision to credit the officer’s testimony over Sampson’s and his cousin’s testimony was not clearly erroneous and that the court did not err in determining that Sampson had used a firearm in connection with another felony offense. As a result, we conclude that the district court properly calculated Sampson’s Guidelines range.

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

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