

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4028

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK SUTTON, a/k/a Bloody,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, Senior District Judge. (1:17-cr-00027-IMK-MJA-1)

Submitted: June 21, 2018

Decided: June 25, 2018

Before DIAZ and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Charles T. Berry, Fairmont, West Virginia, for Appellant. Zelda Elizabeth Wesley, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Clarksburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Sutton pled guilty, pursuant to a plea agreement, to possession with intent to distribute a quantity of cocaine base, in violation of 21 U.S.C. § 841(a)(1) (2012). The district court sentenced Sutton to 151 months' imprisonment, the bottom of his advisory Sentencing Guidelines range. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious grounds for appeal but questioning whether trial counsel rendered ineffective assistance by failing to advise Sutton that he would likely be sentenced as a career offender and whether the prosecutor engaged in misconduct by failing to mention the career offender enhancement during plea negotiations. Sutton was advised of his right to file a supplemental brief, but he has not done so. We affirm.

We do not consider ineffective assistance claims on direct appeal “[u]nless an attorney’s ineffectiveness conclusively appears on the face of the record.” *United States v. Faulls*, 821 F.3d 502, 507-08 (4th Cir. 2016). “Because there is no conclusive evidence of ineffective assistance on the face of this record, we conclude that [Sutton’s] claim should be raised, if at all, in a 28 U.S.C. § 2255 motion.” *Id.* at 508. Further, our review of the current record reveals no evidence of prosecutorial misconduct.

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

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