

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i> v. ROBERT BRUCE PACHALY, <i>Defendant-Appellant.</i>	}	No. 02-4222
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Appeal from the United States District Court
for the District of South Carolina, at Greenville.
Margaret B. Seymour, District Judge.
(CR-00-29)

Submitted: August 16, 2002

Decided: September 23, 2002

Before WIDENER, NIEMEYER, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

David W. Plowden, Assistant Federal Public Defender, Greenville, South Carolina, for Appellant. David Calhoun Stephens, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Robert Bruce Pachaly appeals his sentence of twelve months and one day's confinement for four counts of making false statements in connection with a loans from federally insured banks in violation of 18 U.S.C. § 1014 (2000). In a brief filed pursuant to *Anders v. California*, 386 U.S. 738 (1967), in which his counsel asserts there are no meritorious issues for appeal, Pachaly contests the district court's refusal to depart downward in imposing his sentence. Although he was notified of his right to file a supplemental pro se brief, Pachaly failed to do so by the July 31, 2002 deadline.* For the following reasons, we affirm.

A decision to depart from the sentencing guidelines is a highly factual determination within the exclusive province of the sentencing court; accordingly, this Court will only review such a decision if it reflects a purely legal determination, such as the district court's misapprehension of its authority to depart. *See United States v. Wilkinson*, 137 F.3d 214, 230 (4th Cir. 1998); *United States v. Bayerle*, 898 F.2d 28, 29 (4th Cir. 1990). However, because our review of the sentencing hearing transcript indicates the district court's refusal to depart downward was based on the facts Pachaly presented at sentencing, the single issue raised in Pachaly's brief is not reviewable. *See United States v. Matthews*, 209 F.3d 338, 352-53 (4th Cir. 2000).

In accordance with *Anders*, we have reviewed the entire record and have found no meritorious issues for appeal. We therefore affirm Pachaly's conviction and sentence. We require that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such 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

*We have reviewed Pachaly's brief nevertheless, and find no abuse of discretion in the magistrate judge's denial of Pachaly's fifth request for a continuance. *See United States v. LaRouche*, 896 F.2d 815, 823 (4th Cir. 1990) (quoting *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983)).

on the client. 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.

AFFIRMED